

AGREEMENT FOR PROVIDING FOOD
SERVICES BETWEEN
THE BOARD OF TRUSTEES OF FLORIDA POLYTECHNIC
UNIVERSITY
AND
SODEXO AMERICA, LLC

This AGREEMENT FOR PROVIDING FOOD SERVICES is made between THE BOARD OF TRUSTEES OF FLORIDA POLYTECHNIC UNIVERSITY ("University" or "FPU"), a Florida Corporation in Lakeland, Florida and SODEXO AMERICA, LLC ("Supplier").

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier's invoice or any other document provided by Supplier shall be of no effect.

- 1.0 Description of Services. Supplier hereby agrees to provide Food Service Operations, "Services or Food Services" defined in Exhibit A and to comply with all "Specifications," which may be included in the Services description at Exhibit A. The University shall use reasonable efforts to direct applicable request of such Services to Supplier under this Agreement. Unless otherwise expressly stated herein, this Agreement does not confer on Supplier the right to be the exclusive provider of the Services to the University.
- 2.0 Term. The effective date of this Agreement will be the date it is approved and ratified by The Florida Polytechnic Board of Trustees, if it is not approved and ratified by the Board, this Agreement is null and void. The initial term of this Agreement will begin on June 1, 2014 and end on May 31, 2020 or until satisfactory completion of services, whichever occurs first. At the end of the initial term, this Agreement will be evaluated. If the parties agree that it is a mutually beneficial relationship, the Agreement may be extended in writing for up to three (3) additional one (1) year periods. Time is of the essence in this Agreement.
- 3.0 Performance Standard. Supplier agrees to perform the Services described in this Agreement to the satisfaction of the University and with the standard of care and skill of an expert regularly rendering Services of the type required by this Agreement, and in conformance with all applicable federal, state, local and University law, regulation, ordinance and license.
- 4.0 Warranties and Representations of Supplier. Supplier acknowledges that the University is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which the University would not have entered into this Agreement.
 - 4.1 General Services Warranty. Supplier warrants that all Services provided shall conform to the level of quality performed by experts regularly rendering this type of Service. Supplier warrants for ninety (90) days after accepted completion of a requested Service that its Services are fully satisfactory to the University and will repair, replace or redo at no additional cost to the University any unsatisfactory Services.
 - 4.2 Qualifications. 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 Exhibit A.

- 4.3 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, 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 the University 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 University employee and Supplier.
- 4.4 Nondiscrimination. Supplier warrants that Supplier is an equal opportunity employer. and that, during the performance of this Agreement, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder.
- 4.5 Good Standing. 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 Florida. Contractor represents and warrants that it is not on the Convicted Vendor List (see Florida Statutes §287.133(2)(a)).
- 4.6 Non-infringement. Supplier warrants that the Supplier's Services and/or the University'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.
- 4.7 Not Excluded. Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel, is currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "*Debarment and Suspension.*" Supplier shall immediately notify the University if it becomes debarred or suspended during the term of this Agreement.
- Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the GSA's List of Parties Excluded from Federal Procurement or Non-procurement Programs during the term of this Agreement.
- 4.8 Bonded. Supplier warrants that it is bonded as may be required by law for the Services.
- 5.0 Financial Arrangement. The detailed financial arrangement is in Exhibit B.
- 6.0 Termination.
- 6.1 Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided the breach continues for thirty (30) calendar days ("Cure Period") after receipt by the breaching party of written notice of the breach from the non-breaching party. Cure of the breach within the Cure Period shall continue the Agreement in full force and effect, provided however three (3) breaches of a material provision are an independent material breach not subject to cure.
- 6.2 Immediate Termination. The University shall have the right to terminate this Agreement immediately upon notice to Supplier should any of the following situations occur:

- 6.2.1 Supplier or Supplier Personnel do anything to harm the business reputation of the University;
- 6.2.2 Supplier or any Supplier Personnel is excluded from a federal health care program;
- 6.2.3 If any warranty or representation of the Supplier in this Agreement is or becomes false or untrue;
- 6.2.4 A person's health or safety is or may be in imminent and serious danger due to the actions or inaction of Supplier or Supplier Personnel;
- 6.2.5 There may be imminent and serious harm to the environment or the University property from Supplier's acts or inactions or those of Supplier Personnel; or
- 6.2.6 The University reasonably determines Supplier has violated a law in providing the Services.

6.3 Effect of Termination. Upon notice of termination for any reason, Supplier shall cease all activity. Supplier has sixty (60) days from the date of termination to submit final invoices for final satisfactory Services under this Agreement. University will have no obligation to assist in billing issues or issue payment under the terms of this Agreement for invoices submitted after the sixty (60) day period.

6.4 Without Cause Termination. It is expressly understood and agreed that either party may terminate this Agreement, with or without cause, by providing at least sixty (60) calendar-days advance written notice to the other party, with the termination date to occur only at the end of a semester..

6.5 Change in Law. If, subsequent to the execution of this Agreement, it is determined by either party's legal counsel that this Agreement or any of its provisions may violate or does violate any law, rule, or regulation, the parties agree to renegotiate the provision(s) so that it (they), as well as this entire Agreement, complies with the law, rule or regulation. If the parties are unable to come to an agreement within thirty (30) calendar days, either party may, without further notice, immediately terminate this Agreement.

7.0 Compliance with Laws, Policies & Procedures. Supplier is advised that the University has established a compliance program to assure compliance with applicable laws and University policies designed to prevent and detect fraud, waste, and abuse. To the extent applicable to the Services, Supplier shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University's Ordinances.

Supplier shall be solely responsible for insuring that any recommendations made in connection with the Services comply with all applicable federal, state, local and University laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in this Agreement, Supplier shall obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Services. By executing this Agreement, Supplier warrants and represents that it has all legally required licenses and permits needed to perform the Services.

8.0 Patents, Copyright, Data and Documents.

8.1 Whenever any invention or discovery is made or conceived by Supplier specifically for the University in the performance of the Services under this Agreement, Supplier shall furnish to the University, within thirty (30) days of the creation or conception, the complete information with respect to such invention or discovery and the University shall have the sole power to determine whether and where a patent application shall be filed

and to determine the disposition of title to and all rights under any application or patent that may result. Supplier shall, at the University's expense, execute (or cause to be executed) all documents and do (or cause to be done) all things necessary or proper with respect to such patent application, including causing Supplier Personnel to do the same.

- 8.2 All materials conceived or prepared by Supplier specifically for the University in the performance of Services under this Agreement including but not limited to any and all notes, designs, drawings, memoranda, reports, computer programs and code (including supporting data), and the technical data, if any, furnished or developed by Supplier specifically for the University in the performance of Services under this Agreement ("Work Product") shall be the property of the University. All Work Product shall be delivered to the University upon demand, and the University shall have the right to use Work Product for any purpose that it may deem desirable without the necessity of further compensating Supplier or any other person or persons for their use.

Supplier hereby grants to the University all rights, title and interest in and to all Work Product, and Supplier agrees that Work Product shall be considered "works made for hire" made exclusively for the University under U.S. copyright laws. Supplier shall execute all documents and do all things necessary or proper to give full effect to the provisions of this section. In the event any Work Product shall not be a work for hire under the U.S. copyright laws, Supplier and Supplier Personnel hereby assign to the University all rights, title and interest in the work and agree to execute whatever assignment of copyright and ancillary and confirmatory documents as may be required or appropriate to transfer exclusive title in the Work Product and any copyright in it to the University.

- 8.3 If this Agreement is funded under a Government Prime Contract or Grant, which provides a different disposition for 8.1 and 8.2 above, the latter will govern.

- 9.0 Insurance Coverage and Levels. Unless more specific insurance provisions are attached, Supplier shall, at Supplier's expense, obtain and maintain the following coverage:

- 9.1 Commercial general liability insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).
- 9.2 Professional Liability/Errors and Omissions Insurance with limits not less than \$1 million per occurrence and \$2 million annual aggregate if the activity is deemed professional in nature or performed by someone with a professional designation and is excluded from the Commercial General Liability Insurance.
- 9.3 Worker's Compensation at statutory limits in accordance with the appropriate State of Florida jurisdiction including Employer's liability (with minimum \$500,000).
- 9.4 Automobile liability for owned, non-owned and hired vehicles minimum limit (\$1 million each accident).
- 9.5 Supplier agrees to have The Florida Polytechnic University Board of Trustees added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and incidents arising out of Agreement.
- 9.6 Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
- 9.7 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.

- 9.8 Supplier shall provide the University with a certificate of the above insurance coverage and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.
- 9.9 University shall maintain, or cause to be maintained, a system of coverage (either through purchased insurance, self-insurance, or a combination thereof) to keep the buildings, including the Premises, and all 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
- 10.0 Indemnity. To the extent permitted by law, each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the indemnifying party's acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party's payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

Notwithstanding the foregoing, with respect to property damage for which the parties maintain a system of coverage on their respective property, and based on the representations contained in Section 9.0 above, each party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other party hereto and its subsidiaries and affiliates for loss or damage to such party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard broad form property insurance policies. This clause shall survive termination of the Agreement.

- 11.0 Audit. The Supplier is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The Supplier agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The Supplier shall make available to the University or its agents all such records and documents for audit on the Supplier's premises during regular and reasonable working hours within ten (10) business days of a written request for availability. Supplier agrees to either (a) allow the University to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents the University identifies for later access by the University. The Supplier further agrees to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of this Agreement.

The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by the Supplier for the purpose of fulfilling the Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the University may recoup the costs of the audit work from the Supplier.

- 12.0 Confidentiality. Supplier shall keep confidential and not disclose to third parties any information developed or created under this Agreement or provided by the University or by private individuals, organizations or public agencies pursuant to this Agreement, unless Supplier has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use University information. If Vendor is exposed to FPU's confidential information, Vendor will keep such information confidential and will act in accordance with any guidelines and applicable laws (such as HIPAA, FERPA and the Gramm-Leach Bliley Act.) Confidential information shall not include information that is a public record pursuant to Florida law (Florida Statutes Chapter 119), and FPU will respond to requests for public records without any duty to give Vendor prior notice. However, FPU shall give reasonable notice of requests for Supplier's records not of a public nature. This provision shall survive termination of the Agreement.

This obligation of confidentiality does not extend to information that is or shall become through no fault of Supplier available to the general public.

- 13.0 Non Approved Vendors. University understands that Supplier has entered into agreements with many vendors and suppliers of products which (i) give Supplier the right to inspect such vendors' and suppliers' plants and/or storage facilities and (ii) require such vendors and suppliers to adhere to standards to ensure the quality of the products purchased by Supplier for or on behalf of University. University shall not require Supplier to use products from non-Supplier approved vendors. The University and Supplier shall collaborate on any special vendor requests that will be mutually agreed upon. For the mutual protection of University and Supplier, each such vendor to (i) comply with Supplier's Product Quality Assurance Requirements attached hereto as Exhibit F and (ii) obtain from a reputable insurance company acceptable to University and Supplier liability insurance (including products liability coverage) and contractual liability insurance in the amount of not less than Five Million Dollars (\$5,000,000.00) for each occurrence naming University and Supplier as additional insureds and which insurance shall not exclude the negligence of University or Supplier. A certificate evidencing such insurance shall be provided to University and Supplier upon the request of either party. Each such vendor shall also be required to sign an indemnity certificate (acceptable to University and Supplier) in which such vendor shall agree to defend, indemnify, and hold harmless University and Supplier from and against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses, and attorneys' fees which may arise as a result of using such vendor's product, except when such liability arises as a result of the sole negligence of Supplier and/or University. Each such vendor shall be required to provide to the Supplier General Manager detailed ingredient statements for each food item purchased. University shall not require Supplier to use products from non-Supplier approved vendors until such vendor has demonstrated its ability to comply with Supplier's Product Quality Assurance Requirements, and such insurance certificates, indemnity certificates, and ingredient statements have been provided.

In the event the Non-Sodexo Approved Vendor is unable to comply with the foregoing, Supplier and University shall meet to evaluate: (i) alternative vendor(s) for Supplier and University to utilize for the operation of the Services to replace the Non-Supplier Approved Vendor or (ii) actions necessary to assist the Non-Supplier Approved Vendor to become an

approved vendor, or (iii) if the impediment is the lack of appropriate insurance, the need to purchase products from such Non-Supplier Approved Vendor despite the lack of insurance coverage described above.

14.0 Removal of Supplier Personnel. If any Supplier Personnel repeatedly fails, in the University's sole discretion, to perform in a competent manner, and the University notifies Supplier in writing that the Supplier Personnel is no longer acceptable to the University, citing the grounds and specific supporting facts, then, after written notification from the University, Supplier shall no longer schedule the Supplier Personnel to provide or support Services for the University under this Agreement or any other Agreement with the University. The University, in its sole discretion, may modify this prohibition upon presentation in writing by Supplier of adequate reasons and facts for modifying the prohibition.

15.0 Operational Matters.

15.1 On-site Supplier Personnel shall follow and adhere to the University policies and procedures applicable to the provision of the Services including, by way of example only and without limitation (a) sign-in procedures, (b) identification badges, (c) executing confidentiality statements, (d) participation in any required training, parking regulations.

15.2 Except as otherwise expressly provided in this Agreement, Supplier shall be responsible for payment of all business expenses incurred while providing the Services.

15.3 Supplier agrees to timely cooperate and assist with any applicable performance improvement and quality assurance activities of the University as they may relate to the Services.

15.4 Supplier Cooperation. Supplier shall cooperate and make adjustments as necessary in the methods and timing for provision of Services under this Agreement so that other Suppliers and University personnel can perform their independent obligations to the University.

15.5 Limitation on Supplier Personnel. Supplier agrees that unless otherwise approved by the University in writing in advance, no Supplier Personnel shall provide services if any of the following have occurred: (a) any *applicable* registration, certification, licensure (including where applicable, Medicare/Medicaid provider status) of Supplier Personnel, in any state, is or has been threatened with limitation, suspension, revocation or exclusion; (b) any *applicable* registering, certifying, or licensing board reprimands, sanctions or otherwise disciplines Supplier Personnel; or (c) a negligence or malpractice claim related to the provision of the Services or similar services has been asserted against Supplier Personnel.

15.6 Access to Books and Records. The parties agree that if this Agreement is subject to the Medicare statutes and regulations governing access to books and records of subcontractors (Section 952 of the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980, which amends section 1861(V) (1) of the Social Security Act), Supplier shall retain and, for four (4) years after Services are furnished by Supplier, shall allow the authorized representatives of the Comptroller General, the University, and the Department of Health and Human Services access to this Agreement and to the books, records, and other documents of Supplier that are necessary to verify the nature and extent of the costs of the Services. In the event Supplier receives a request for access, Supplier agrees to notify the University immediately and to consult with the University regarding what response will be made to the request. This Agreement to provide access shall continue for four (4) years after the Services are terminated.

If Supplier carries out any responsibilities under this Agreement through the use of a subcontractor, including any organization related by ownership or control with Supplier, when the subcontract is worth or costs \$10,000 or more over a twelve (12) month period, Supplier shall obtain and forward to the University the subcontractor's written promise to be bound as Supplier is under this same access Agreement.

- 16.0 Duties of the University. Except as otherwise expressly provided in this Agreement, the University will furnish Supplier with the space, facilities and accommodations, the University deems reasonably necessary to support Supplier in the provision of the Services contemplated by this Agreement.
- 17.0 Miscellaneous.
- 17.1 Use of the University Name and Marks. The University acknowledges Supplier's right to make, without the consent of the University, public statements regarding the existence of the contract, its terms and conditions and an accurate description of the products or services being supplied. However, except as permitted by the previous sentence, Supplier may never make any public statement (for example a press release or any form of advertisement) describing the University's relationship with Supplier or implying or stating the University's endorsement of Supplier or Supplier's product or services without the prior written consent of the University's Office of Communications. The University may withhold *its* consent in *its* absolute discretion. Supplier acknowledges that the University will require ten (10) business days to consider any request for consent. Supplier may not under any circumstances use any University Trademark.
- 17.2 Use of Premises or the University Property. Supplier shall neither use nor allow Supplier Personnel to use any part of the University premises or property for any purpose other than the performance of the Services under this Agreement.
- 17.3 Independent Contractor Status of Parties. It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the University. Supplier and Supplier Personnel are not employees of the University and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Supplier has such authority.
- 17.4 Assignment. Supplier may not subcontract, assign or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the University. Notwithstanding any consent by the University 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 the University. The Supplier shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.
- 17.5 Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated on the Signature page (or to such other addressee as may be later designated by written notice) by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after mailing.
- 17.6 Entire Agreement, Amendment. This Agreement and Its Exhibits constitute the entire

understanding between the parties with respect to the subject matter and may not be amended except by an agreement signed by Supplier and an authorized representative of the University. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.

- 17.7 Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 17.8 Governing Law, Construction and Venue. All matters arising out of or related to this Agreement shall be governed by and construed under the laws of the State of Florida without regard for principles of choice of law. Any claims, demands, or actions asserted against The Florida Polytechnic University Board of Trustees for damages shall be brought in the Florida Courts. Supplier, its successors and assigns, consent to the jurisdiction of the Polk County, Florida courts with respect to any other claims arising under this Agreement.

- 17.9 Headings. The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.
- 17.10 Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 17.11 Survivability. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, Confidentiality, warranty and choice of law and venue.
- 17.12 Execution. This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed and negotiated by the parties.
- 17.13 No Third Party Rights. Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- 17.14 Force Majeure. Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall; (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.
- 17.15 Tax Exempt Status. Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Florida.
- 17.16 Dispute Resolution. Supplier and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
- 17.17 Freedom of Information Act. Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of Florida Public Records Law ("Act") and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.
- 17.18 Supplier Damage to the University Property. Without regard to any other section of the Agreement, Supplier shall be responsible for the costs to return in "as was" condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under this Agreement. Supplier shall immediately report in writing the occurrence of any damage to the Building/Project Manager.

17.19 Supplier Clean-up. Supplier will remove all packing materials, rubbish and dirt from the University premises associated with Suppliers provision of Services under this Agreement.

18.0 Federal Grant and Contract Terms & Conditions

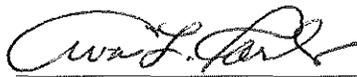
Federal funds may be used to pay for all or part of these purchases under this Agreement. These terms and conditions are dictated by the funding agency. The University must comply by insuring that the Supplier understands and can abide by the funding agency requirements and as such, this Agreement is subject to the terms and conditions dictated by the funding agency. The cited references carry the same force and effect as if given in full text. All references to granting agency in the regulations cited are understood to refer to University, all references to grantee or recipient are understood to refer to Supplier

This Agreement becomes binding when signed by both parties.

SUPPLIER: SODEXO AMERICA, LLC

UNIVERSITY: THE FLORIDA POLYTECHNIC
UNIVERSITY BOARD OF TRUSTEES

By: 
Aubry Wooten, Regional Vice President


Ava L Parker, Chief Operating Officer

4-3-14
Date

3-31-14
Date

Notices to Sodexo to be addressed
as follows:

Sodexo America, LLC
Attention: Jim Jenkins
Senior Vice President
11044 Research Blvd., Suite A-105
Austin, Texas 78759

and to:

Sodexo America, LLC
Attention: Law Department
9801 Washingtonian Blvd., Dept.
51/899.74
Gaithersburg, Maryland 20878

Approved as to form
& legality

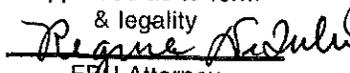

Reggie Andrews
FFJ Attorney

EXHIBIT A
SCOPE OF SERVICES
General Services

1.0 Scope of Services to be provided.

Supplier will provide a comprehensive, high-quality food service program to include retail food services and catering at the Florida Polytechnic University.

Supplier shall serve as the designated retail and self-contained food service operator in the spaces provided in Exhibit C at the Florida Polytechnic University campus. Supplier will provide food and beverages for day to day consumption by faculty, staff, and students of the Florida Polytechnic University, for non-Florida Polytechnic University occupants and visitors to the complex.

Service areas include the space as defined in Exhibit C ("PREMISES"). Service areas may be expanded upon approval by University and Supplier.

The scope also includes a potential to provide catering services to The Florida Polytechnic University customers. This opportunity will not be exclusive outside the Wellness Center.

Supplier may also utilize the PREMISES to support FPU business outside of the Wellness Center.

Supplier is responsible for and has exclusive rights to food service operations equipment in the specific areas defined in Exhibit C. The seating portions are open to all University personnel for food consumption from the Supplier's operations as well as food consumption from other methods. These seating areas are also open for study, meetings or other activities, regardless of Supplier's hours of operation. Purchase from the food service operation is not required for students or personnel to use these seating areas, outside of the dining service hours of operation.

2.0 Use of Premises

2.1 Until the date of Agreement termination or expiration the Supplier may use and occupy the PREMISES solely for conducting and carrying on the business of managing the food service operations for University.

2.2 Supplier shall not sell any products or provide any services other than those listed in the attached Exhibit A without obtaining University's prior written consent, such consent not to be unreasonably withheld or delayed.

2.3 Nothing in this Agreement is intended to grant Supplier an exclusive right to conduct business in Florida Polytechnic University Buildings for the use described in this Agreement or otherwise.

2.4 University grants to Supplier, its agents, servants, employees and customers the non-exclusive right to use the common areas of the building in which the PREMISES are located with other Suppliers and their agents, servants, employees, and customers. All common areas shall be under the exclusive control and management of the University.

2.5 The seating portions of all retail locations are open for food consumption for the retail locations and for studying/meeting, regardless of retail hours of operation. Purchase from the food service operation is not required for students or University personnel or guests to use these areas.

3.0 Term of Agreement

- 3.1 The University shall allow Supplier to begin Initial Improvements to the PREMISES beginning after the signing of this Agreement by both parties or July 1, 2014 whichever shall occur last. The Initial Improvements shall be completed as set forth in paragraph 4.4 of this Exhibit A.
- 3.2 The Agreement shall begin on July 1, 2014 or the first day of business, whichever shall occur first and shall continue to the expiration of this Agreement on May 31, 2020.
- 3.3 If University cannot make the PREMISES available to the Supplier on the day listed in paragraph 3.1 above, the University will extend the beginning of the Agreement time frames listed in paragraphs 3.1 and 3.2 by a number of days equal to the delay, however, the end of Agreement date shall not be extended.
- 3.4 As a condition to any renewal of the Agreement, Supplier shall provide University written plans for cosmetic improvements to the store fronts including, but not limited to, the front counter area, signs, menu boards, etc. for the purpose of providing a fresh appearance for the extended period of the Agreement. Final plans must be approved by University prior to the commencement of work. Supplier would also be expected to provide a refresh to all catering menus and services.

4.0 Initial Improvements

- 4.1 Prior to commencing demolition or construction of the Initial Improvements, Supplier will provide to University, at Supplier's sole cost and expense, drawings, specifications and construction plans ("PLANS") meeting all applicable building codes and showing all Initial Improvements to be made to the PREMISES by Supplier prepared by licensed architects/engineers who are knowledgeable of University and State of Florida codes. The PLANS shall include, without limitation, details of mechanical and electrical installations, all of the designs and appearance of Supplier's store and store front, and the mechanical and electrical components indicating connected fixtures, lighting equipment, receptacle locations and load, motor sizes and locations, sound systems, wiring and outlets, and special requirements of the Supplier. The Executive Director of Auxiliary Services will coordinate the review and approval in writing of the PLANS prior to the commencement of demolition or construction. All PLANS must be architecturally and aesthetically compatible with the building in which the PREMISES are located, as reasonably determined by University. Failure of University to approve or reject the PLANS in writing within thirty (30) calendar days from receipt or final execution of this Agreement, whichever is later, shall be deemed to be a rejection of the PLANS. Approved PLANS will become a part of this Agreement and attached as Exhibit D.

- 4.2 Upon written approval by University Director of Facilities Management, the Supplier may proceed with demolition and to install and construct the Initial Improvements at the sole cost and expense of Supplier. Supplier agrees to hire based on the current "prevailing wage" as defined by the Florida Department of Economic Opportunity. Supplier shall keep University's Director of Facilities Management informed of its activities with the Initial Improvements and shall not materially deviate from the PLANS set forth in Exhibit D without the prior written approval of the Director of Facilities Management. The Executive Director of Business and Auxiliary Services shall retain the right to disapprove of, and require a change or removal of, any material deviation from the PLANS set forth in Exhibit D related to Initial Improvements made or to be made by the Supplier to any part of the PREMISES.
- 4.3 Supplier is responsible for the initial inspection and acceptance of existing systems as being adequate for Supplier's operations. These systems include, but are not limited to, heating, cooling, ventilation, fresh air supply, electrical, gas, steam, water and sewer. Any required changes to existing systems within the PREMISES and/or building systems in order to meet the needs of the Supplier's operation must be approved and coordinated by the University. The cost of any required changes to existing systems will be the Supplier's sole responsibility. University will not unreasonably withhold or deny its consent to Supplier's plans.
- 4.4 Initial Improvements will be completed by:
- IST Building coffee shop: No later than July 7, 2014
 - Wellness Center: to be determined, but no later than August 14, 2014.

5.0 Signs and Displays

- 5.1 Supplier agrees-not to display, inscribe; paint, use or affix any sign, picture, advertisement, name, notice or advertising equipment on any part of the inner or outer walls of the PREMISES or elsewhere that is visible to the public, which, as to color, size, style, material, location and/or design, is unsatisfactory to University. The University must approve, in writing, all permanent signs prior to installation. Signs shall be installed or displayed at Supplier's sole expense. Supplier may not display signs exterior to the building in which the PREMISES are located and signs may not be placed in exterior windows.

6.0 Fixtures and Equipment

- 6.1 Upon the prior written consent of Executive Director of Business and Auxiliary Services, which consent shall not be unreasonably withheld, conditioned or delayed, Supplier, at its own cost and expense, may furnish, install and maintain all fixtures and equipment necessary to display, sell and conduct its business on the PREMISES.

7.0 Condition of Premises

- 7.1 Supplier acknowledges that it has examined the PREMISES prior to the making of this Agreement, and knows the condition thereof, and that no representations as to the condition or state of repair have been made by University, or its employees or agents, which are not expressed in this Agreement, and Supplier accepts the PREMISES in their present condition at the date of the execution of this Agreement. Additional structural modifications to the existing structure due to the specific and exclusive use by the Supplier shall be by Supplier at Supplier's sole cost and expense with University's written approval pursuant to Section 4.
- 7.2 If it is determined that the PREMISES provided by University for use in the Food Service operation is not in compliance with applicable laws concerning building conditions, sanitation, safety and health (including OSHA regulations), University agrees to the extent permitted by law to be responsible for liability which may arise out of the University's acts or omissions under this agreement for which the University would be liable in law or equity. University agrees that any modification or alterations to the PREMISES (structural) necessary to comply with any statute or governmental regulation shall be the responsibility of University and at the University's expense, unless caused by Supplier's negligence or Supplier modifications or alterations.
- 7.3 University shall be responsible for the maintenance of the core building systems (including, but not limited to, HVAC, plumbing, electrical, gas, water and sewer for the building in which the PREMISES are located, as well as for the maintenance and cleanliness of the common areas of the building. University shall use its best efforts to reasonably enforce its rules and regulations for the building.
- 7.4 University cannot guarantee the uninterrupted delivery of utilities to the PREMISES. University does not guarantee that utilities that are currently available in the PREMISES are sufficient for the Supplier's needs. Any needed utility upgrades are the sole cost of the Supplier.

8.0 Supplier's Occupancy

- 8.1 The Executive Director of Business and Auxiliary Services, or his/her designee, shall be responsible for overseeing Supplier's retail and catering operations and for coordinating with the Supplier's manager. Such oversight shall include the monitoring of operations with respect to price, quality of service and product, hours of operation, and observance of safety, sanitation and maintenance practices, all of which must be acceptable to the University.
- 8.2 Supplier shall keep the PREMISES in a clean and sanitary condition and shall comply with all applicable laws, codes and regulations concerning the PREMISES and the operation of its business thereon, including University's reasonable requirements concerning health or safety, as enforced by the local Health Department.

Supplier shall be responsible for all costs associated with implementation of recommendations by fire, health and building inspectors resulting from Supplier's operation or the nature of Supplier's business in the PREMISES.

- 8.3 Supplier shall not alter, deface or otherwise interfere with the fire safety, heating, air conditioning and ventilation systems in the PREMISES without the prior written approval of University.
- 8.4 Florida Law provides no smoking in public buildings. Smoking is restricted to designated areas.
- 8.5 Supplier shall not knowingly do, bring, or keep anything in or about the PREMISES that will cause cancellation of any insurance covering the Florida Polytechnic University Buildings or other improvements.
- 9.0 Supplier shall keep the PREMISES clean and neat; shall provide all necessary custodial services for the PREMISES; and shall remove and place all trash in the proper trash receptacle, except to the extent that University makes other arrangements. Access to the trash receptacles will be allowed to Supplier during normal building hours. Supplier shall cooperate with University in keeping other areas of the Florida Polytechnic University Buildings clean and unobstructed so as to keep the PREMISES and the common areas of the Florida Polytechnic University Buildings in a clean and orderly state of the highest degree possible.

10.0 Supplier Personnel

- 10.1 Supplier shall staff all retail and catering operations located on the PREMISES with experienced and qualified managerial and service staff. During peak rush hours, Supplier will utilize sufficient additional employees to avoid unreasonable lines and to expedite service sufficient to meet customer demand and high customer service expectations.
- 10.2 Supplier's employees must maintain a professional appearance and mode of conduct. If the working behaviors or performance of any of Supplier's employees is unacceptable to University, Supplier will take immediate corrective action including removal of the employee from the PREMISES and University's property. Any such removal shall be performed in accordance with Supplier's personnel policies and shall not violate any applicable federal or state laws.
- 10.3 Supplier shall assume all legal and financial responsibility for business and employment taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime payments and other employee related compensation issues with respect to Supplier's employees, as required by law.
- 10.4 Supplier shall employ all personnel needed to operate Supplier business on the PREMISES in a safe, efficient manner focused on high-customer service.
- 10.5 Supplier shall make every attempt to employ University students, provided there are qualified students available and willing to work.

- 10.6 Supplier personnel shall not be considered to be the personnel of the University for any purpose. Supplier has no authority to employ persons on behalf of the University; such persons at all times shall remain Supplier contractor's personnel or independent contractors working for Supplier.
- 10.7 If any Supplier personnel repeatedly fails, in the University's sole discretion, to perform in a competent manner, and the University notifies Supplier in writing that the Supplier personnel is no longer acceptable to the University, citing the grounds and specific supporting facts, then, after written notification from the University, Supplier shall no longer schedule the Supplier personnel to provide or support Services for the University under this Agreement, or any other Agreement with the University. The University, in its sole discretion, may modify this prohibition upon presentation in writing by Supplier of adequate reasons and facts for modifying the prohibition.
- 10.8 Supplier shall perform background checks on all personnel, to ensure the safety of the University community. These background checks will be at the expense of the Supplier and shall be performed on a regular schedule for Supplier personnel who are continuing employees.
- 11.0 Supplier shall conduct its business within the PREMISES in an efficient, high quality, lawful and reputable manner. Supplier shall take all steps reasonably necessary to enhance and improve customer satisfaction.
- 12.0 Pricing for Retail Food
- 12.1 Supplier shall purchase and own all food, beverage and supply inventories utilized in the Food Service operations. Supplier shall conduct the business within the PREMISES in an efficient, high quality and reputable manner. Prices to be charged by Supplier to its customers shall be competitive and in keeping with similar operations of businesses conducted within the Lakeland, Florida area.
- 12.2 The University reserves the right to accept or reject all or any of Supplier's subsequent proposals to increase a price. At a minimum, any proposed increases in prices, including but not limited to Meal Plan prices, must reflect increases in the Producer Price Index, Foods Mfg. Series Id: PCU311 – 311 ("PPI"). .
- 12.3 University and Supplier will meet bi-annually to review any menu and price changes. All price increases must be approved by the Executive Director of Business and Auxiliary Services and will not be unreasonably delayed or withheld.
- 13.0 University's Nutrition Guidelines
- 13.1 All menu offerings must have nutritional and ingredient data available upon request.
- 13.2 Supplier agrees to use Healthy nutrition guidelines to identify healthier choices and will work with the University to modify menu offerings when requested.
- 14.0 Sustainability/Going Green
- 14.1 Supplier will use recyclable disposables where practical and Supplier will also explore using sustainable practices (i.e. refillable coffee mugs/water bottles) when practical and logical.
- 14.2 Supplier will conserve resources such as electricity, water, and gas.

15.0 Hours of Operation

15.1 Retail services will not be required on University approved holidays and seasonal days; however it is the University's expectation that the Supplier offer some service at the Wellness Center on all other days that the University is open for business. At this time, retail service on Saturday and Sunday is not required. Supplier can annually select an additional ten (10) days to provide no retail service that will be pre-approved by the Executive Director of Business and Auxiliary Services.

- New Year's Day, January 1
- Martin Luther King Day,
- Memorial Day
- Independence Day, July 4
- Labor Day
- Thanksgiving Day and the day following
- December 25th through December 31st.

15.2 Deviations from established operating hours may be made by mutual written agreement between the University and Supplier as business or special events warrant.

15.3 Supplier shall operate the Branded Concepts at University's Premises under the conditions set forth below. 'Branded Concepts' are defined as food and beverage systems operated by Supplier through national and regional third party license agreements or franchise agreements or through Supplier's own in-house trademarked brands.

15.3.1 Supplier shall control the standard Branded Concepts operations, including menus, recipes and pricing. Staffing and hours of operation shall be mutually agreed upon.

15.3.2 Representatives of the licensor of the Branded Concepts shall be allowed access to the Premises during reasonable business hours for quality assurance inspections of the Branded Concepts.

15.3.3 Supplier shall notify University twenty (20) days in advance of any termination or expiration of a license or franchise agreement related to a Branded Concept. Supplier and University shall mutually determine what operation, if any, will replace such Branded Concept. In any event, the Branded Concept operation shall terminate upon termination or expiration of the Agreement.

15.3.4 Upon termination or expiration of the Agreement, Supplier shall remove related equipment in accordance with the terms of the applicable license agreements.

15.3.5 Branded Concepts to be operated by Supplier are to be determined by mutual agreement of the parties.

16.0 Wellness Center Retail Operations

Initial **retail operations** for the Wellness Center Operations: Starbucks, We Proudly Serve, Grill, Sub Connection, bottled beverages and Simply to Go.

16.1 Hours of Operation

Monday thru Thursday	7:30am – 5:00pm
Friday	7:30am – 1:30pm

Simply to Go C-Store will be open on Saturday and Sunday 11:00am-7:00pm.

17.0 IST Building Coffee Shop

The initial retail operations for the IST Building coffee shop: Starbucks We Proudly Serve with Simply to Go food and bottled beverages.

17.1 Hours of Operation

Monday thru Thursday	7:30am – 5:00pm
Friday	7:30am – 1:30pm

18.0 Wellness Center Food Court

18.1 Proposed Concepts: Concept(s) to be mutually agreed upon by Supplier and University; opening to occur no later than August 5, 2014. The parties have agreed to the following initial formats in the Resident Dining Operation; Fresh Expressions to include daily rotations of: entrées and sides (home cooking), salad/soup, pizza, deli, grill, desserts and beverages.

18.2 Hours of Operation
To be determined by mutual agreement of Supplier and University based on concept, building occupancy and sales. Supplier proposes the following hours of operation:
Monday – Friday: Breakfast 7:00am-9:00am, Lunch 11:30am-1:30pm and Dinner 5:00pm-7:00pm. Saturday/Sunday: Brunch 11:00am-1:00pm and Dinner 5:00pm-7:00pm.

Business hours will be reviewed each semester and may be adjusted based on sales and meal plans purchased. Hours of operations will be mutually determined by Supplier and Executive Director Auxiliary Services.

18.3 Proposed-Menu

The final menu for the Student Center Food Court location is subject to review and approval by the Executive Director Auxiliary Services and will not be unreasonably delayed or withheld.

19.0 Facilities and Operations

19.1 Supplier is responsible for providing, maintaining and replacing necessary small wares, cleaning supplies and products, the coffee and cappuccino machines and other small equipment required to maintain the desired menu.

19.2 Supplier will be responsible for the maintenance and repair of all movable fixtures and equipment owned by the Supplier. Supplier will clearly mark/identify all equipment that it provides or upon termination of the agreement all equipment will be presumed to belong to the University.

19.3 Supplier will be responsible for the maintenance and repair of all University owned

equipment that Supplier uses while providing services under this agreement. Supplier will adhere to all manufacturers required maintenance schedules if known and available and will maintain a complete maintenance and repair log that will be available when requested by the Executive Director of Business and Auxiliary Services. If the maintenance schedules are not available, Supplier will at a minimum, have equipment serviced annually.

- 19.4 Exhibit E is an itemized list of equipment that Supplier will use and maintain. This list may be revised upon mutual agreement between Supplier and the University. University may purchase the equipment or Supplier will purchase the equipment as part of the One Million Dollar (\$1,000,000.00) Investment, detailed at Section 4.3 of Exhibit B.
- 19.5 University will be responsible for either ensuring the University-owned equipment is in good working order prior to the start of operations or will repair the equipment if it fails within the first six months of operation.
- 19.6 Phone service will be the responsibility of the Supplier. Local and long distance phone service will be available with a recharge of expense to the Supplier. University will invoice the Supplier monthly for their usage. University will provide phone and internet lines in all office space to be utilized by Supplier, along with a phone and 2 internet connections in the kitchen and a phone line at the IST Coffee Shop. In addition, University will provide Cardsmith data lines and internet connections for credit cards at the entrance of Resident Dining, Wellness Retail, and IST Coffee Shop.

20.0 Catering Services

20.1 Service Expectations:

- 20.1.1 Supplier will adequately staff and provide high-quality service and food to events in several campus locations simultaneously.
- 20.1.2 Supplier is responsible for handling and transporting all refuse generated by the food service operations to the designated areas. University will bear the expense of having refuse removed from the designated areas. Supplier may be asked to participate in any University-wide composting initiatives.
- 20.1.3 Supplier will maintain the general cleanliness of the customer seating areas during hours of operation. This includes bussing and cleaning the tables.

- 20.1.4 Supplier will meet with the Executive Director of Business and Auxiliary Services annually or as needed, to discuss catering service expectations and policies. Services to be agreed upon will include but not be limited to: expectations for set-up and cleaning of meeting rooms, use of linens and other service items or equipment, menus and service standards.
- 20.1.5 Regulatory Compliance. Supplier must comply with all applicable local Health Department, OSHA and Florida Department of Labor Safety Standards. Supplier shall comply with all applicable provisions of the Florida Public Health Code, the Food Law of 2000, all applicable federal, state, and local laws, and must comply with all applicable University rules, regulations and policies/procedures, including but not limited to the regulations related to parking on campus, as provided to Supplier by University, in writing.
- 20.1.6 Supplier shall provide management employees to supervise all food service employees. Managers shall be certified through an accredited program such as ServSafe.
- 20.1.7 All non-management food service employees shall be Supplier employees. Supplier shall consider University's employee policies and practices when establishing policies and practices for Supplier employees.
- 20.1.8 Each party shall be solely responsible for all personnel actions regarding employees on its respective payroll. Each party shall withhold all applicable federal, state and local employment taxes and payroll insurance with respect to compensation plans, licensing fees and worker's compensation costs and shall file all required documents and forms.
- 20.1.9 Executive Director of Business and Auxiliary Services will have the right to interview Supplier's final candidates for all management personnel to include but not be limited to the candidates that may be hired to fill the General Manager, Catering Manager and Executive Chef positions at the University. Supplier will not hire any managerial candidates that are determined to be unacceptable to the University.
- 20.2 Withhold Payment. The University, at its discretion, may withhold the whole or part of any payments to Supplier to the extent appropriate to set off University losses or costs to protect the University from loss, due to, but not limited to the following causes:
- 21.2.1 Defective work and product not corrected.
- 21.2.2 Damage to personnel or property of University or third party caused by act, omission or negligence of Supplier, or its agents or employees.
- 20.3 All wait staff and on-site personnel shall be TAM (Techniques of Alcohol Management) or TIPS (Training for Intervention Procedures) certified to serve alcohol.
- 20.4 Supplier will provide catering menus and pricing to the Executive Director of Business and Auxiliary Services for review and approval. Supplier agrees to collaborate with University to provide a variety of menu options that will be acceptable to University customers and at pricing that is competitive with pricing of caterers conducting business within the Lakeland, Florida area.

20.5 All proposed price increases must be supported by documentation of increased Supplier costs. Menu changes and price increases shall be mutually agreed upon.

21.0 Changes, Alterations and Modifications to Services. The University may at any time by a written order change the extent of the Services covered-by this Agreement, the drawing, specifications or other description, or the time of completion. Promptly upon receipt of the details of any change, Supplier shall either advise the University that the change will not affect its costs, or furnish: (a) a breakdown of estimated cost and changes to the Financial Arrangement of Exhibit B resulting from the requested change and (b) a statement of any necessary changes in the time of completion. Supplier's failure to advise the University within ten (10) days of the effect of any change in cost or completion time shall constitute Supplier's consent to conform to the change without change to the Financial Arrangement, or without change in other terms and conditions of this Agreement. If the change causes a material increase or decrease in costs, then an equitable adjustment of the Financial Arrangement to be paid to Supplier shall promptly be negotiated by the University and Supplier and incorporated as an amendment to this Contract.

22.0 Reporting.

22.1 When performing services under this Agreement Supplier shall report to Executive Director of Business and Auxiliary Services or other designated personnel at the University.

22.2 Reports Format

After the execution of this Agreement, Supplier will consult with the University for the purpose of designing financial and operating reports which can be generated periodically by Supplier's accounting system and operating systems and which are satisfactory to the University. These reports can be either printed documents or Excel spreadsheets. The Supplier will provide these reports at no cost to the University.

Examples of these written reports include but are not limited to:

22.2.1 Weekly Sales Reporting: Supplier agrees to report weekly sales (defined as Monday through Sunday) to the Executive Director of Business and Auxiliary Services as follows:

- Gross sales
- Sales tax
- Cash/check sales
- Credit card sales
- Poly Bucks sales (where applicable)
- Daily customer count
- Weekly catering orders/sales

22.2.2 Monthly Sales Reports

Monthly file that includes transaction volume by source, average ticket, time of transaction, location of purchase and type (designated area catering, other property catering, Food Services by location)

22.2.3 Annual Contract Report Summary of the year's sales, products, services, customers and future contract goals.

- Sales by location

- Catering sales by Shortcode
- Sales by Delivery Code, Building or Location
- Average orders processed per year and dollar value of orders

22.2.4 Customer Satisfaction Survey and summary

The survey questions will be mutually agreed upon within 45 days of execution of agreement.

23.0 Financial Records and Performance Reviews

- 23.1 Supplier agrees to keep copies of true and accurate books and records of account of all sales made and business transacted in the Food Service operations performed under this Agreement at the Premises. Supplier further agrees that University and its duly authorized agents may, during reasonable business hours and at reasonable times, have access to all such books and records of Supplier in Lakeland, Florida for the purpose of determining whether or not Supplier has duly performed all of the terms, covenants and conditions under this Agreement provided that University provides Supplier with seven (7) days' notice. Supplier will also provide to University annual financial statements covering all such sales made and business transacted. Such statements shall be furnished to University within ninety (90) days of the end of the Supplier's fiscal year and shall be reviewed by a certified public accountant. The Supplier's fiscal year ends on August 31, 2013 and every August 31 thereafter.
- 23.2 Supplier agrees to participate in an annual Financial Performance Review with the University's Executive Director of Enrollment Services, Director of Student Affairs and Student Life, Enrollment Services & Student Life, and Executive Director of Business and Auxiliary Services. Supplier and University also agree to participate in an annual Expectation Meeting to establish mutually agreed upon short- and long-term goals for the Florida Polytechnic University dining services.
- 23.3 Supplier agrees to participate in quarterly Financial and Service Performance Reviews with the Executive Director of Business and Auxiliary Services. These reviews will focus on finances, menus, marketing, pricing, sustainability initiatives, student programming, and customer feedback.
- 23.4 Supplier agrees to participate in a monthly Partnership Report Card review with the Executive Director of Business and Auxiliary Services and the Supplier's General Manager and District Manager.

24.0 PCI Compliance

- 24.1 Supplier agrees to maintain compliance with the PCI Data Security Standard for the life of the contract. Demonstration of such compliance will be by providing the University, upon request, with a signed Attestation of Compliance (AOC).
- 24.2 Supplier will also protect the credit card data in accordance with the PCI Data Security Standard, acknowledge responsibility for the security of the cardholder data, and be

responsible for covering all costs (e.g. notification, fines, credit monitoring, etc.) in the event of a breach of their systems.

- 24.3 Supplier shall process credit/debit card transactions on University's premises using Supplier provided technology systems and broadband internet connectivity. This connectivity is to be provisioned by Supplier and this connectivity will exist independent of University's existing network infrastructure. University will grant Supplier and its contractors access to all necessary points of demarcation for the provisioning of broadband internet connectivity and provide Supplier with physical cabling structure necessary to extend broadband Internet connectivity to the credit/debit cardholder data environment and associated hardware. Should University be unable or unwilling to provide such cabling, Supplier will install necessary cabling components using a Supplier contracted vendor and will grant Supplier and its contractor access to all necessary demarcation points and data closets in order to complete installation. Supplier will provide network security and management, and all associated hardware, for the credit/debit cardholder environment at University's premises through Supplier's third-party provider. Supplier represents and warrants that it will adhere to and maintain its network and data security practices at University's premises in compliance with PCI/DSS (Payment Card Industry Data Security Standard (<http://www.pcisecuritystandards.org>))"

EXHIBIT B
FINANCIAL ARRANGEMENT
Retail Food and Catering Operations

The Supplier will pay the University for Services performed under this Agreement as follows:

All payments under the Agreement shall be submitted as follows:

Made payable to:
Florida Polytechnic University
Mailed to:
The Florida Polytechnic University
4700 Research Way
Lakeland Florida, 33805
Attn: Ray Galleno, Executive
Director of Business and Auxiliary
Services

- 1.0 Meal Plan Rates and Billing. The University has the option of having Meal Plan Rates and Billing as described below in Options A and B. The University will inform Supplier of the initial chosen Option on or before July 1, 2014. If the University chooses Option A initially, the University may change to Option B in any subsequent Contract Year by providing Supplier written notice of such change at least 60 days prior to the Contract Year in which the change will be effective.

1.1 Meal Plan and Declining Balance Programs.

14 meals/wk + \$225 DCB means that a patron is provided 14 meals during the week (Friday - Thursday) in the Wellness Center non-retail operations. If a patron fails to use all 14 meals during the week, the unused meals are forfeited. In addition, the patron receives \$225 in their account to be used toward purchases in the Supplier's retail and non-retail operations; any balance remaining at the end of the Fall semester is rolled over to the following Spring semester, and any balance remaining at the end of the Spring semester is forfeited.

DCB \$650 means a patron receives up to \$650 worth of purchases in the Supplier's retail or non-retail operations. If the DCB \$650 is purchased in the Fall, and the patron fails to use up the \$650 balance, the remaining balance will be transferred to the patron's Spring account. If the DCB \$650 is purchased in the Spring, and there is a balance at the end of the Spring semester, the unexpended balance is forfeited.

DCB \$750 means a patron has \$750 balance in their account to use toward retail and non-retail purchases in the Supplier's retail and non-retail operations. If there is a balance remaining at the end of the Fall semester, the balance will be credited in the next Spring semester, but if there is a balance remaining in the patron's account at the end of the Spring semester, it is forfeited.

Summer DCB \$150 means that a patron has \$150 balance in their account to use toward purchases at the Supplier's retail and non-retail operations.

50 Block means that the student has 50 meals in the non-retail operations.

1.2 Meal Plan Program Pricing

Option A-

Supplier shall offer the following Meal Plans/Rates, commencing June 1, 2014:

<u>Meal Plan</u>	<u>Rate</u>
<u>14 meals/wk + \$225 DCB</u>	<u>\$16.53 per patron per day/\$1818.30 per semester*</u>
<u>DCB \$650</u>	<u>\$600 per patron per semester</u>
<u>DCB \$750</u>	<u>\$700.00 per patron per semester</u>
<u>50 Block</u>	<u>\$415 per patron per semester</u>
<u>Summer DCB \$150</u>	<u>\$150 per patron for semester</u>

Option B-

Should the University find it more beneficial to eliminate Section 2.0 of this Exhibit B requiring annual guaranteed payments, the meal plan rate for the 14 Meal Plan will be reduced from a daily rate of \$16.53 to \$11.20 as follows:

14 Meals + \$225 \$11.20 per patron per day/\$1,232.00 per patron per semester

1.3 Billing

Supplier shall invoice University for estimated amounts for the first month of each semester for resident dining and all DCB and Block Plans on the 10th day of each semester. Commencing with the second advance billing, each monthly invoice shall include an adjustment reconciling the estimated and actual charges for the previous period. Payment shall be made in accordance with Regulation FPU-8.002; payment of an invoice shall be disbursed within thirty (30) days after receipt of a proper invoice, and if payment of an invoice is not issued within thirty (30) days after the University's receipt of a proper invoice the University, upon a valid request, will pay to the Contractor/Vendor, in addition to the amount of the invoice, an interest penalty at the rate established pursuant to Florida Statutes §55.03(1).

2.0 Minimum Annual Payment to University

2.1 In the event that the University chooses the 14 Meal Plan daily rate of \$16.53 (Option A), Supplier shall guarantee a **Minimum Annual Payment** as follows: Supplier agrees to pay the University the Minimum Annual Payment in the amount of Sixty Five Thousand Dollars (\$65,000) for the contract year 1 of the Agreement (August 15, 2014- August 14, 2015) payable in equal monthly installments and shall become due and payable on the 1st day of each month, Net 30.

The Minimum Annual Payment was calculated by dividing the projected student count from the student count at the University of Michigan Dearborn which initially has 3 times the students FPU is projecting.

2.2 The Minimum Annual Payment amount will be increased in accordance with the schedule below for each contract year during the initial term of the Agreement until the FPU student count stabilizes at Year 5. Additional one-year options commencing with Year 5, will be negotiated with a minimum of 3% annual

Annual Payment Amounts:

Year 1	\$65,000
Year 2	\$111,031
Year 3	\$173,762
Year 4	\$178,975
Year 5	\$219,474
Year 6	\$226,058
Year 7	\$232,840-
Year 8 (option)	\$239,825 minimum
Year 9 (option)	\$247,020 minimum

2.3 Monthly payments for Year 1 of this Agreement will be \$5,416.00, commencing November 1, 2014.

Notwithstanding any of the foregoing, it is expressly understood by the parties that the Minimum Annual Payments shall not apply, for those contract years when Option B is in effect.

3.0 Commission Payments

3.1 Supplier shall collect and account for cash receipts realized from the Retail Sales operations and pay operating expenses. Any profit or loss shall be for Supplier's account. Supplier shall pay to the University commission payments as follows, in addition to the Minimum Annual Payment:

- 5% commission on all Net **retail** cash sales generated on PREMISES.
- 5% commission on declining balance (DCB) dollars Net Sales.
- 25% commission on board meal plan sales (Meal Plan 14 and 50 Block Plan)
- Two-tiered incremental catering commission:
 - 10% on \$0 to \$700,000 annual Net Sales
 - 20% on \$700,001 and over annual Net Sales
 - Both parties agree to review the success of the catering structure after the second year of the Agreement.

As an example, and in an effort to avoid any confusion, catering commissions on \$750,000 in catering Net Sales will be calculated as follows: $\$700,000 \times 10\%$ ($\$70,000$) plus $\$50,000 \times 20\%$ ($\$10,000$) = $\$80,000$ commissions due to University.

Supplier shall pay commissions due to University at the appropriate settlement time; provided, however, that Supplier shall first offset any past due amounts owed by University to Supplier, including interest charges at amount not to exceed the maximum allowed under Florida Law.

Supplier will pay University the commissions within 30 days after the end of each Contract Year.

3.2 Supplier shall provide to University with each commission payment a statement showing customer count, Gross Sales Net Sales and declining balance dollars.

Gross Sales shall be defined as all sales of food, beverages, goods, merchandise and services in the Food Service operation, including sales tax; Net Sales shall be defined as Gross Sales less sales tax.

3.3 Supplier shall submit any catering or other billings to University as incurred. Payments shall be due within thirty (30) days after the University's receipt of invoice.

4.0 Additional Payments

4.1 Supplier will provide \$15,000 annually to be used for \$5,000 student internship scholarships or meal plan scholarships, at the University's discretion.

- 4.2 Supplier will contribute 1% of total annual Net sales in all categories to a student programming fund that will be used to enhance the student experience at FPU. This fund will be managed with the input of the Executive Director Business and Auxiliary Services.
- 4.3 Supplier will invest \$1,000,000 ("Investment") to be utilized in the equipping of the IST Building Coffee Shop and the Wellness Center dining facilities. The Investment will be administered and construction supervised by the Sodexo Solution Center. The total Investment amount shall include a Charge for the services of the Sodexo Solution Center equal to 10% of the Investment

Supplier shall amortize the Investment on a straight-line basis over nine (9) years, commencing August 1, 2014. Such amortization shall be charged as an operating expense of the Food Service operation. The University owns the Investment, excluding proprietary equipment and signage utilized in the Branded Concepts operation; however, the University shall **not** be responsible for reimbursement of the Investment unless one of the following events occur:

If prior to the complete amortization of the Investment any of the following events occur:

- (i) the Agreement expires;
- (ii) the Agreement is terminated by University;
- (iii) the Agreement is amended and such modification has an adverse economic impact on Supplier; or
- (iv) if at University's request, Supplier's procurement programs are no longer utilized for the purchase of goods in connection with the Services provided under this Agreement.

Then University shall reimburse Supplier, on the expiration date, or within five (5) days after the date the termination is effective or within forty (40) days after the occurrence of (iii) or (iv) above, the unamortized portion and shall thereafter continue to own the equipment/renovation.

Supplier will provide an additional Five Hundred Thousand Dollars (\$500,000.00) (one-time payment) toward the renovation/construction of the Premises in the event the University awards a contract to Supplier to provide complete facility services on the campus. The University has until June 1, 2014 to decide whether or not to award such contract to Supplier and receive the additional investment funds. If such funds are received, they shall be amortized in the same manner as above.

- 4.4 Supplier will invest the \$1,000,000.00 Investment detailed at Section 4.3 above for start-up/renovation costs related to the We Proudly Serve Starbucks at the IST Building and the food services at the Wellness Center, construction and trade dress for stations. University shall have no responsibility with respect to reimbursement of Supplier's non-capital opening expenses. Supplier will submit a proposal for approval prior to implementing any changes to the spaces. Upon completion of the work related to the Investment, Supplier shall provide the University with an accounting regarding the use of the Investment monies, and if the amount expended is less than \$1 million, the Supplier shall pay the University the difference to be put toward the renovation costs related to the IST Building Coffee Shop.
- 4.5 In the event the following minimum board/retail and declining balance revenues ("Minimum Revenues") are not achieved during each Contract Year as provided in 4.5 A. or 4.5 B., as applicable, below, University shall pay to Supplier an amount equal to the revenue shortage:

A. Minimum Revenues for Option A

<u>Year</u>	<u>Total Revenues</u>
Year 1	851,134
Year 2	1,701,158
Year 3	2,175,300
Year 4	2,240,559
Year 5	3,365,112
Year 6	3,466,065
Year 7	3,570,047
Year 8	3,677,148
Year 9	3,787,463

B. Minimum Revenues for Option B

<u>Year</u>	<u>Total Revenues</u>
<u>Year 1</u>	<u>675,244</u>
<u>Year 2</u>	<u>1,555,241</u>
<u>Year 3</u>	<u>2,035,058</u>
<u>Year 4</u>	<u>2,144,684</u>
<u>Year 5</u>	<u>3,240,490</u>
<u>Year 6</u>	<u>3,337,705</u>
<u>Year 7</u>	<u>3,437,836</u>
<u>Year 8</u>	<u>3,540,971</u>
<u>Year 9</u>	<u>3,647,200</u>

- 4.6 University agrees to provide, without charge to Supplier, HVAC, electricity, gas and water/sewer service reasonably required for the Supplier's operation in connection with the proper conduct of its food service functions. Supplier shall be responsible for grease trap cleaning, hood inspections, cleaning and pest control. Supplier shall at all times utilize prudent energy management and seek ways to minimize utility costs.
- 5.0 Taxes
- 5.1 Supplier shall be solely responsible for the reporting, collection and payment of any personal property, sales, income or other taxes arising from the operation of its business on the PREMISES and shall secure any necessary licenses to do business. Should any real property tax ever be assessed against the University buildings, Supplier will pay its proportionate share during the term of this Agreement thereof computed by use of the formula provided below:
- $$\frac{\text{Facility Total Property Taxes} + \text{Facility Usable Square Feet} \times \text{Supplier's Usable Square Footage}}{\text{Facility Usable Square Feet} + \text{Supplier's Usable Square Footage}}$$
- 5.2 All taxes shall be paid in the usual course of business so as not to be overdue. Any judgment creditor attachments shall be satisfied by the Supplier within ten (10) days.

6.0. Late Charge

6.1 If any payment from Supplier is not received by University within 15 calendar days of the date it is due, Supplier shall pay as a late charge to University a sum of five (5) percent of the amount due as a late fee plus an interest rate of 12% per annum (or the maximum rate which is permitted by law if lower than 12%) until the overdue amount is paid. This late charge will be based on the first business day following the date the payment is due. Acceptance of any late charge shall not constitute a waiver of Supplier's default with respect to the overdue amount or prevent University from exercising any of the other rights and remedies available to University. Late charges are immediately due and payable.

EXHIBIT C

1.0 PREMISES

Supplier shall have use of the following spaces under the terms of this Agreement:

- 1.1 IST Coffee Shop
- 1.2 Wellness Center Food Services Areas

EXHIBIT D

INITIAL IMPROVEMENTS-APPROVED PLANS

IST Coffee Café and Wellness Center
(To Be Determined)

EXHIBIT E

LIST OF UNIVERSITY OWNED EQUIPMENT

1. To Be Determined

EXHIBIT F

Product Quality Assurance Supplier Requirements

Food Category

ALL FOODS AND BEVERAGES- Non-Specific

All Sodexo Accounts- Requirements

All Sodexo policies related to the purchasing of food products must be adhered to at all times. References for policies: Sodexo Company Policy (CP) Manual, Sodexo Administration and Finance (A&F) Manual and Sodexo Hazard Analysis Critical Control Points (HACCP) Food Safety Program Manual.

All foods must be purchased from suppliers (producers and/or distributors) that meet or exceed Sodexo product quality assurance requirements.

Products listed on the Sodexo "Banned Products" list are not to be used.

All Food Suppliers- Requirements

Sodexo food suppliers, including manufacturers and distributors, must comply with the FDA's registration requirement BS described in the Bioterrorism Preparedness and Response Act of 2002 if applicable. Proof of said registration is required to be shown to the auditor at the time of the Sodexo required supplier OA audit (if applicable). For additional details refer to <http://www.fda.gov/oc/bioterrorism/bioact.html>

National and Regional Supplier Approval Requirements

- Signed contract or signed letter of intent to meet Sodexo's product quality assurance requirements (as determined by Sodexo).
- Signed indemnity agreement.
- Provide liability Insurance naming Sodexo as additional insured.
- Provide verification of a proactive food safety and food security program in place meeting or exceeding Sodexo Product Quality Assurance requirements.
- This proof could be in the form of an audit or documented program as determined by the Sodexo Product Quality Assurance Department.
- Provide technical data sheets in Sodexo's approved format for all food products if requested.
- Provide Supplier recall policy & procedures with emergency contact information.

