MASTER AGREEMENT

#: VCU-SVS-7142

This Master Agreement ("Agreement"), July 1, 2026 ("Effective Date"), is between Virginia Commonwealth University, a corporation and an institution of higher education of the Commonwealth of Virginia, whose address is 912 West Grace Street, Richmond, VA 23298 ("VCU", or "University"), and Ovations Food Services L.P. a limited partnership, doing business as OVG Hospitality, with offices located at 5050 S. Syracuse Street, Suite 800, Denver, CO 80237, ("Ovations Food Services L.P." or "Firm"). VCU and Firm are sometimes referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, VCU issued a Request for Proposals to solicit proposals for Athletics Food and Beverage Operations (the "Services/Goods"), RFP # 203224537BA issued July 14, 2025 (the RFP); and

WHEREAS, Firm submitted: (1) its proposal dated September 5, 2025, and (2) its Revised Partnership Extension Draft Terms dated December 4, 2025 (together, the "Proposal") wherein it wished to be considered, among other things, for the Services/Goods as more fully specified therein; and

WHEREAS, VCU considered all proposals submitted, including the Firm's Proposal, and VCU now desires to award to Firm, understanding that the final execution date shall be deemed the Award Date; and

WHEREAS, Firm desires to perform the Services/Goods as set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. **<u>AGREEMENT DOCUMENTS:</u>** The following documents are integrated into and made part of this Agreement:

A. ATTACHMENT A: General Contractual Provisions

B. ATTACHMENT B: Specific Contractual Provisions

C. ATTACHMENT C: SOW

D. ATTACHMENT D: Financial Terms

E. ATTACHMENT E: Pro Forma*

F. ATTACHMENT F: Capital Plan

G. RFP# 203224537BA issued July 14, 2025, by reference;**

H. Firm's RFP Proposal, dated September 5, 2025 and the Revised Partnership Extension Draft Terms dated December 4, 2025, by reference

In the event of a conflict or inconsistency between the documents comprising this Agreement, the documents shall control in the following order of precedence:

1. Written Amendments executed by both parties after the Effective Date;
2. This Master Agreement and its Attachments (A through F);
3. The Request for Proposals (RFP) #203224537BA.**

The Firm's Proposal is incorporated solely for its descriptive and operational narratives for informational purposes, and is not intended to impose additional binding obligations beyond what is set forth in this Master Agreement and its Attachments. For the avoidance of doubt, the Financial Terms in Attachment D and Capital Plan in Attachment F supersede any conflicting financial figures or terms found in the Firm's Proposal.

*The Pro Forma is presented for informational purposes only and is not a guarantee of the Facilities' performance. Firm makes no warranties, express or implied, regarding the occurrence or completeness of the Pro Forma, and VCU acknowledges and agrees that the Pro Forma is subject to change during the Term.

**For the avoidance of doubt, the General Terms included in the RFP are expressly excluded from this Agreement and the General Terms in Attachment A hereto shall exclusively apply.

B. DEFINITIONS:

1. "University" or "VCU" means Virginia Commonwealth University.

2. "Services/Goods" means the athletics food and beverage operations and related services/goods described in Attachment C (Scope of Work).

3. "RFP" means RFP #203224537BA issued July 14, 2025.

4. "Renewal Term" means the one (1) additional five (5) year renewal period, if exercised by VCU, as described in the "TERM and RENEWAL OF CONTRACT" section of this Master Agreement.

5. "Proposal" means Firm's proposal referenced in the recitals and included among the Agreement Documents, as amended by any subsequent revisions incorporated pursuant to the order of precedence.

6. "Initial Term" means the initial five (5) year term described in the "TERM and RENEWAL OF CONTRACT" section of this Master Agreement.

7. "Gross Sales" has the meaning set forth in Attachment D (Financial Terms).

8. "Firm" means Ovations Food Services L.P., doing business as OVG Hospitality, and its permitted successors and assigns.

9. "Facilities" means the facilities and locations described in Attachment C (Scope of Work).

10. "Effective Date" means the date first set forth above.

11. "Contract Year" (or "Agreement Year") means each consecutive twelve (12) month period beginning on June 1 and ending the May 31 of the following year; provided, that for purposes of this Agreement there shall be (i) an initial "Stub Contract Year" (which is also a Contract Year) defined as the Effective Date through May 31, 2027, and (ii) one additional monthly Accounting Period (as defined in Attachment D) in the Initial Term or Renewal Term, as applicable.

12. "Commencement Date" means July 1, 2026.

13. "Award Date" means the final execution date of this Agreement (date of last signature), as referenced in the recitals.

14. "Attachments" means Attachments A through F to this Master Agreement.

15. "Agreement Documents" means the documents listed under "AGREEMENT DOCUMENTS" above.

16. "Accounting Period" has the meaning set forth in Attachment D (Financial Terms).

17. "Capital Expense" means any single repair, replacement, or improvement to the Facilities or equipment that costs in excess of $1,200 per incident. Unlike routine maintenance, these expenses are not charged as Allowable Operating Expenses without prior written approval from VCU. These investments typically support food and beverage operations, such as POS hardware, kitchen equipment, or premium area enhancements.

18. "Underwritten Investment" (specifically the "OVG Underwritten" portion of the Capital Investment) refers to the $525,000 commitment by the Firm that shall be considered underwritten by Firm as set forth in Attachment F.

Capitalized terms used in this Master Agreement and not otherwise defined herein shall have the meanings set forth in the applicable Attachment(s). In the event of any inconsistency between a definition in this Master Agreement and a definition in an Attachment, the Attachment definition shall control for purposes of interpreting and applying that Attachment.

C. **TERM and RENEWAL OF CONTRACT:** The Initial Term of this Agreement shall be five (5) years, commencing on the Commencement Date and concluding on June 30, 2031. The University shall have the unilateral right to renew this Agreement for one (1) additional five (5) year period, concluding June 30, 2036 (the "Renewal Term"), by providing written notice to the Firm no later than one hundred twenty (120) days prior to the expiration of the Initial Term (or such longer time as may be required for Firm to comply with applicable law.)

D. **SERVICES/GOODS:** Firm shall provide comprehensive food and beverage operations, including concessions and catering, for VCU Athletics and other covered events at the Facilities described in Attachment C (SOW), including staffing, operational management, ordering/procurement, menu planning, service execution, and reporting, in accordance with the standards and deliverables set forth in Attachment C.

E. **FIRM RESPONSIBILITIES:** Firm shall perform the responsibilities, deliverables, and service levels described in Attachment C, including (at a minimum): (i) staffing and day-to-day management of the program; (ii) concessions and premium service delivery for events; (iii) at-cost Athletics catering as applicable; (iv) cash handling controls and reconciliation support; (v) reporting and review cadence with VCU; and (vi) execution of the Capital Plan in Attachment F.

F. **SUSTAINABILITY:** Firm shall conduct its operations in a manner that supports VCU's sustainability goals, including those set forth in the ONE VCU Sustainability Plan. The Parties shall meet at least once each Contract Year to review performance and mutually agree on a written sustainability plan for the upcoming year, with participants to include representatives of the Firm, VCU Athletics, the VCU Office of Sustainability, and VCU Procurement Services. For the avoidance of doubt, updates to the sustainability plan agreed upon at these meetings shall not require an amendment to this Agreement. Each Party shall use commercially reasonable efforts to carry out such sustainability plans and keep the other Party reasonably informed of its progress.

G. **<u>FEES:</u>** VCU shall compensate Firm in accordance with Attachment D (Financial Terms), including (as applicable) management fees, incentive fees, revenue/profit share mechanics, and at-cost catering structure.

H. **<u>ACCEPTANCE OF VCU PURCHASE ORDERS</u>:** In connection with any Food and Beverage Services provided by Firm to VCU under the terms of this Agreement, the Firm will provide a detailed statement of work prior to any project summarizing specific services, deliverables, delivery dates, and cost. The Firm will do so without introducing additional terms or conditions and will not require VCU to sign any separate agreements for such Food and Beverage Services.

I. **<u>PAYMENT METHOD AND PAYMENT TERMS:</u>** This Section I shall apply to any Food and Beverage Services provided by Firm to VCU under the terms of this Agreement.

1. VCU shall pay Firm within the net days specified below following receipt of a proper invoice, services rendered, or goods delivered, whichever is later pursuant to and in accordance with §§ 42-45 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth* (similar to the Virginia Prompt Payment Act).
2. All payments will be made based on the net terms agreed upon in this Agreement, starting from after receipt of invoice or delivery, whichever occurs last. This shall not affect offers for early payment discounts, however.
3. Fees appearing to be incorrect will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached.
4. Specific Terms:
    a) Payment Method: ACH - Paymode-X Basic
    b) Payment Terms: Net 35
5. Firm acknowledges and agrees that the payment method agreed to under this Agreement shall apply to all invoices and payments related to this Agreement and any other current or future agreements, purchase orders, or transactions involving the same Firm, regardless of remit-to address or locations.

    If VCU and Firm execute multiple agreements with different payment methods specified, VCU may, in its sole discretion, select and apply one preferred payment method across all such agreements and associated transactions for consistency and administrative efficiency. VCU may update the payment method in the Firm's vendor file without further notice.

    Any Firm-requested changes must be submitted in writing and are subject to approval by the Office of Procurement Services. Firm may, at any time, upgrade to either the Virtual Card or Premium ACH (Paymode-X) payment method by coordinating with Bank of America or Paymode-X. These upgrades do not require an amendment to the Agreement but VCU reserves the right to reject or deny a change deemed not in the best interest of the University.

J. **INVOICING:** All invoices will reflect the VCU Purchase Order number and will be emailed to VCU.Invoices@trustflowds.com or mailed to Accounts Payable, Box 3985, Scranton, PA 18505. For additional information regarding proper invoicing practices follow the link below:

https://procurement.vcu.edu/for-suppliers/vendor-invoicing--payment/

Firm shall comply with all University invoicing requirements, including submission through VCU's designated intake channels and accurate referencing of applicable Purchase Orders. VCU reserves the right to reject or return any improper invoice, including but not limited to duplicate invoices, without penalty. In the event Firm repeatedly submits improper invoices, VCU may impose administrative fees and costs, and may deduct such fees and costs from future Firm payments.

K. **CONTRACTS ADMINISTRATOR:** The Firm will not make any commitments/comments which bind the University or take actions on behalf of the University without the explicit direction of the Contract Administrator.

1. Primary Administrator:

The Primary Administrator is the point of contact for day-to-day operations under this Agreement. The Firm and the Primary Administrator acknowledge that no binding changes or amendments to this Agreement can be made without approval of the Office of Procurement Services. The Primary Administrator is:

Mike Sanders, Sr. Associate A.D. for Finance & Internal Operations - mwsanders@vcu.edu

2. Secondary Administrator:

Firm will channel all contract questions not pertaining to a specific service or department request through the VCU's Procurement Office and the individual named below:

Brandon Augustine, Director – baugustine@vcu.edu

Any updates to the information in this section may be provided to the Firm in writing. A formal amendment to this Agreement is not required to do so.

L. **NOTICES:** Notices, requests, claims, legal notices, and other communications not related to the day-to-day operations, but required or permitted under this Agreement, shall be in writing, shall refer specifically to this Agreement, and shall be deemed delivered upon receipt. Any such notices, requests, and other communications shall be addressed as follows:

FOR VCU:

Director
Office of Procurement Services
912 West Grace Street, 5th Floor
Richmond, Virginia 23298-0327
(804) 828-1077
contracts@vcu.edu

FOR FIRM:

OVG Hospitality
5050 S. Syracuse St., Suite 800
Denver, CO 80237

Attn: President

With a copy to:

OVG Hospitality
5050 S. Syracuse St., Suite 800
Denver, CO 80237
Attn: OVG360 Legal Department
Email: OVG360Legal@oakviewgroup.com

Any notice sent by any other means shall not be considered duly given or delivered unless the receiving party affirmatively acknowledges receipt.

M. **SMALL BUSINESS AND SUPPLIER DIVERSITY (SBSD) CERTIFIED BUSINESSES REPORTING:** The Firm will identify and fairly consider SBSD Firms for subcontracting opportunities when qualified SBSD firms are available to perform a given task required under this Agreement. Firm will submit a quarterly SBSD business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January.

Firm will submit the quarterly SBSD business reports, based upon the Firm's proposed commitment to:

VCU SBSD Reporting
swamreporting@vcu.edu

The quarterly SBSD business reports will contain the following information:

1. SBSD firms' name, address and phone number with which Firm has contracted over the specified quarterly period.
2. Contact person at the SBSD firm who has knowledge of the specified information.
3. Type of goods and/or services provided over the specified period of time.
4. Total amount paid to the SBSD firm as it relates to the University's account.

Firm's failure to provide SBSD reports on a quarterly basis which contain the information required by this section and/or Firm's failure to comply with the plan for utilizing SBSD businesses submitted by Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 9(G)(4) of the *Purchasing Manual (https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf).*

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties agree that this Agreement contains the entire understanding between the Parties and may only be modified upon mutual agreement and executed in writing by authorized representatives of each Party. By signing below, the signatories affirm that they are the authorized representatives of their respective party and have been delegated authority to bind their respective parties in contract.

Virginia Commonwealth University	**Ovations Food Services L.P.**
By: Signed by: Michael Rao A5F198A1803A4CD...	By:
Name: Michael Rao	Name: Brian Rothenberg
Title: President	Title: EVP and General Counsel
Date: 7/7/2026	Date: 06/22/26

ATTACHMENT A
VIRGINIA COMMONWEALTH UNIVERSITY
GENERAL CONTRACTUAL PROVISIONS

A. **COMPLIANCE**. Firm[1] will comply with all applicable laws, regulations, industry codes, and guidance in performing services under this Agreement.

B. **CONFLICT OF INTERESTS**. The Firm represents and affirms to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq* of the *Code of Virginia* (*Virginia Code*), the Virginia Ethics In Public Contracting Act (*Virginia Code* § 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (*Virginia Code* § 18.2-498.1 *et seq*) or any other applicable law or regulation. Should circumstances change, the Firm will notify the University of any potential conflict of interests prohibited under law.

C. **INDEPENDENT CONTRACTOR**: Firm is not an employee of the University, but is engaged as an independent contractor. The Firm will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Firm's performance of this Agreement. Nothing in this Agreement will be construed as authority for the Firm to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

D. **WAIVER OF CLAIMS**: No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.

Notwithstanding anything contained herein to the contrary, VCU is an agency of the Commonwealth of Virginia and as such, pursuant to *Virginia Code* § 2.2-514, cannot waive or settle legal claims that VCU may have against another party nor may VCU bestow any right or obligation that is beyond the duly granted authority of the signatory to bestow or incur on behalf of the Commonwealth of Virginia.

E. **NONDISCRIMINATION/ANTI-DISCRIMINATION**: During the performance of this Agreement, Firm will comply with the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975 (VFECA), as amended, the Virginians With Disabilities Act (VDA), the Americans With Disabilities Act (ADA) and § 9 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth* (*Governing Rules*).

If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Governing Rules* § 36)

In every contract over $10,000, the provisions below apply.

a) During the performance of this Agreement, the Firm agrees as follows:

   a. The Firm will not discriminate against any employee or applicant for employment because of race, religion, color, gender, gender identity, national origin, age, disability or other basis prohibited by state law relating discrimination, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Firm. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

[1] The term "Firm" shall have the same meaning and be interchangeable with the terms "Vendor", "Supplier" and/or "Firm" as such terms may be used/referenced in this Agreement or any underlying agreement documents.

b. The Firm, in all solicitations or advertisements for employees placed by or on behalf of the Firm, will state that such Firm is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

d. If Firm employs more than five employees, Firm shall (i) provide annual training on Firm's sexual harassment policy to all supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post Firm's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth of Virginia that Firm owns or leases for business purposes and (b) Firm's employee handbook.

b) The Firm will include the provisions of a through d above in every subcontract or purchase order over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

F. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: Firm warrants and certifies that it does not and will not during the performance of this contract employ unauthorized alien workers, as defined by the federal Immigration Reform and Control Act of 1986 or violate any other provisions of the Act.

G. **RESERVED.**

H. **NON-APPROPRIATION**: Funding for any Agreement between the University and a Firm is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated by the University upon no less than 180 days' prior written notice to Firm. In the event of any such early termination in accordance with this Section H, and in addition to the Buyout Amount (as defined in Attachment F), University shall reimburse Firm for any actual ordinary and necessary expenses incurred by OVG in withdrawing from the provision of services within 30 days receipt of an invoice. Further, upon such termination, University shall purchase (or shall require the successor food and beverage company at the Facility to purchase) from Firm any remaining food and beverage, and consumable goods (e.g., cups, napkins, etc.), inventory on hand at the Facility, for the price paid by Firm for such inventory, as evidence by written invoices or receipts. Notwithstanding the foregoing, University shall not be obligated to purchase (or to have the successor food and beverage manager purchase) any such inventory that is branded with the Firm name or logo, or to the extent purchase thereof would be in violation of applicable law.

I. **VIRGINIA MINIMUM WAGE ACT**: All Firms must comply with the state and federal minimum wage requirements. Every Firm shall pay to each of their employee's wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage as prescribed by Virginia Minimum Wage Act (Virginia Code § 40.1-28.8 et seq.) and the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.), respectively. For details on minimum wage law requirements, contact the Department of Labor & Industry at: https://doli.virginia.gov.

J. **WORKERS' COMPENSATION**: Firm will (i) obtain and maintain a workers' compensation policy for all employees in accordance with applicable law, and (ii) comply with all federal and/or state laws and regulations pertaining to Workers' Compensation requirements for insured or self-insured programs.

K. **DRUG-FREE WORKPLACE**: Firm, its agents and employees are prohibited, pursuant to *Governing Rules* §11, and the Commonwealth of Virginia, Department of Human Relations Management Policy No. 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, the Firm agrees to (i) provide a drug-free workplace for the Firm's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Firm's workplace and specifying the actions that will be taken against employees for violation of such prohibition: (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Firm that the Firm maintains a drug-free workplace: and (iv) includes the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor providing services under this Agreement.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a Firm, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

L. **VIRGINIA FOIA**: Nothing contained herein is intended to limit VCU's compliance with the Virginia Freedom of Information Act ("VFOIA"). For clarity, agreements and pricing between VCU and its vendors are not considered to be exempt from VFOIA requests.

M. **STATUTORY DAMAGES**: VCU is not authorized to waive damages granted or otherwise available by statute.

N. **SOVEREIGN IMMUNITY**: VCU is an agency of the Commonwealth of Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against VCU or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims against VCU or the Commonwealth, including the Virginia Tort Claims Act (Virginia Code §§ 8.01-195.1 et seq.) and other applicable statutes relating to claims against the Commonwealth or its agencies. Notwithstanding any other provision, nothing in this Agreement shall be deemed to be or construed as a waiver of VCU's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against VCU or the Commonwealth. The total cumulative liability of the University, its officers, employees, and agents in connection with this Agreement or in connection with any goods, services, actions or omissions relating to this Agreement, shall not under any circumstance exceed payment of the maximum purchase price.

O. **REPRESENTATIONS AND WARRANTIES**: All representations and warranties made by the University are made to the best of its knowledge at the time the representation or warranty is made. University will use its best efforts to comply with all conditions and restrictions on its accounts and the services provided hereunder.

P. **INFORMATION TECHNOLOGY ACCESS**: All electronic and information technology procured through this agreement must meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended and is viewable at http://www.section508.gov. If requested, the Firm must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration Additionally, in accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

All information technology ("Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

1. Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
2. The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
3. Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
4. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if University's Executive Director of Procurement Services determines (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Firm must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, *Virginia Code* §§ 2.2-3500 through 2.2-3504.

Q. **ARBITRATION:** Neither Party shall be compelled to agree to any form of binding alternative dispute resolution, but may request and/or opt to participate in non-binding alternative dispute resolution in its sole discretion.

R. **CONTRACTUAL CLAIMS PROCEDURE**: *Governing Rules § 53* (similar to the Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments) requires Firms with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, (A) the foregoing shall only apply to claims which Firm is aware as of 60 days following final payment, and (B) written notice of the Firm's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

1. Firm must provide the written claim to:
   Director of Purchasing
   Virginia Commonwealth University
   Office of Procurement Services
   912 West Grace Street
   Box 980327
   Richmond, Virginia 23298

2. Although Firm may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section 1 above, Firm must submit any unresolved claim in writing no later than 60 days after final payment to the Director of Purchasing if it wishes to pursue its claim.

3. Upon receiving the written claim, the Director of Purchasing will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Firm. If such discussion is to be held, the Director of Purchasing will contact Firm and arrange such discussion. The manner of conducting such discussion will be as Director of Purchasing and Firm mutually agree.

4. The Director of Purchasing will mail his or her decision to Firm within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.

5. Firm may appeal the decision to:

   Executive Director of Procurement Services
   Virginia Commonwealth University
   Office of Procurement Services
   912 West Grace Street
   Box 980327
   Richmond, Virginia 23298

   Provide a written statement explaining the basis of the appeal within fifteen (15) calendar days after Firm's receipt of the decision.

6. Upon receiving the written appeal, the Executive Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with Firm. If such discussion is to be held, the Executive Director of Procurement Services will contact Firm and arrange such discussion. The manner of conducting such discussion will be as the Executive Director of Procurement Services and the Firm mutually agree.

7. The Executive Director of Procurement Services will mail his or her decision to Firm within 60 days after the

receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

Nothing in this procedure will preclude either party from filing a claim in any court of the Commonwealth of Virginia to seek legal or equitable remedy if a dispute should arise, in addition to such other remedies as are expressly provided in this Agreement. Firm may not, however, file such claim unless and until it has complied fully with the procedure set forth in this provision.

S. **PAYMENT OFFSET**: In the event any payment from VCU to Firm is intercepted and offset by the federal government or the Commonwealth of Virginia pursuant to applicable law, such payment shall be deemed received in full by Firm for the applicable services or goods. Firm acknowledges that it shall not seek additional payments from VCU, suspend services, or refuse to perform under this Agreement solely due to such lawful offset. This provision shall not limit Firm's rights to pursue remedies directly with the applicable governmental entity responsible for the offset, nor shall it preclude Firm from enforcing its rights under this Agreement in the event of non-payment unrelated to such offset.

T. **PURCHASING MANUAL**. This Agreement is subject to the provisions of the Commonwealth of Virginia *Purchasing Manual for Institutions of Higher Education and Their Vendors* (*Purchasing Manual*) and any subsequent revisions, which is available on Procurement and Supplier Diversity Services website at: https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf. In the event of a conflict between this Agreement and the Purchasing Manual, this Agreement shall control.

U. **REALSOURCE REGISTRATION**: The Firm is required to register in VCU's source-to-pay platform, RealSource, upon signing an agreement with VCU. For information on registering, visit realsource.vcu.edu. Registration is free, and registered vendors shall have access to purchase order, invoice, and payment information. Firm is responsible for the security of its RealSource portal account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of the Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to the Firm's failure to update or protect its account information. If this is a cooperative procurement, this clause shall apply to orders placed by VCU only.

V. **ORDERING PROCESS**. The University does not place verbal orders for Goods and Services. The University may only place orders for the Goods and Services by issuing a formal written Purchase Order in advance of Firm's provision of the Goods and Services. Accordingly, at the University's request, the Firm will issue a proposal/quotation listing the Goods and Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding Purchase Order for a specified fee amount. This specified fee amount cannot be exceeded by the Firm unless a new formal written Purchase Order or Purchase Order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize the Firm to provide the Goods and Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If the Firm provides Goods and Services prior to receipt of a formal written Purchase Order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk. For the avoidance of doubt the foregoing only applies to internal University-Athletics and University events, and the foregoing procedures is not applicable to Firm's standard concessions services at the Facilities.

W. **eVA REGISTRATION**: The eVA Internet electronic procurement solution is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal, found at www.eva.virginia.gov, is a gateway for Firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA and all Firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. Firm is required to register in the eVA Internet e-procurement solution as a condition of award and remain eVA registered during the term of this Agreement.

Firm shall be responsible for the security of its eVA account, including restricting access to it, maintaining the confidentiality of login information, and taking any other actions necessary to protect the security of Firm's account. VCU will not be responsible for a third party's fraudulent collection of VCU payments due to Firm's failure to update or protect its account information.

X. **eVA FEES**: Unless the procured services are exempt pursuant to eVA standard, Firm will be subject to an eVA transaction fee, for which Firm will be invoiced by Commonwealth of Virginia, Department of General Services. The

Commonwealth shall assess eVA transaction fees as specified below for each order resulting from this Agreement. The Vendor transaction fee (which is subject to change) is:

5. DSBSD-certified Small Businesses: 1%, capped at $500 per order.

6. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at $1,500 per order.

The specified Vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and the invoice is payable 30 days after the invoice date. ***Firm shall be prohibited from recouping or seeking reimbursement of the eVA fee by invoicing the University for the fee.***

Y. **SMALL BUSINESS AND SUPPLIER DIVERSITY (SBSD) CERTIFIED BUSINESSES REPORTING:** If Firm has a SBSD plan or is required to have a SBSD plan, the Firm will identify and fairly consider SBSD Firms for subcontracting opportunities when qualified SBSD firms are available to perform a given task required under this Agreement. Firm will submit a quarterly SBSD business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January.

Firm will submit the quarterly SBSD business reports, based upon the Firm's proposed commitment to:

VCU SBSD Reporting
swamreporting@vcu.edu

The quarterly SBSD business reports will contain the following information:

1. SBSD firms' name, address and phone number with which Firm has contracted over the specified quarterly period.

2. Contact person at the SBSD firm who has knowledge of the specified information.

3. Type of goods and/or services provided over the specified period of time.

4. Total amount paid to the SBSD firm as it relates to the University's account.

Firm's failure to provide SBSD reports on a quarterly basis which contain the information required by this section and/or Firm's failure to comply with the plan for utilizing SBSD businesses submitted by Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 9(G)(4) of the *Purchasing Manual.*

Z. **FEDERAL PROVISIONS**: For Contracts funded by a U.S. Government grant or contract, the following provisions found in Appendix II of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule (2 CFR Part 200, et al) shall be incorporated and made a part of this Contract.

AA. **LIMITATION OF LIABILITY**: Firm shall be liable only for the direct damages to the extent caused by the negligence of itself, its officers, employees, and agents in connection with this Agreement or any goods, services, actions, or omissions relating to this Agreement. In no event shall either party be liable or responsible for any consequential, indirect, incidental, or special damages (including, without limitation, lost profits) whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise.

BB. **GRAMM-LEACH-BLILEY ACT**: If applicable, the Firm shall comply with the Act by implementing and maintaining appropriate safeguards to protect and prevent unauthorized release of student, faculty and staff nonpublic information. Nonpublic information is defined as social security numbers, or financial transactions, bank, credit, and tax information.

CC. **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)**: If Firm is providing any items, data or services under this order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR), it must notify (by sending an email to exportctrl@vcu.edu and receive prior written authorization from, the University's Export Compliance Program before delivery. The notification provided by the supplier shall include the name of the Virginia Commonwealth University point of contact, identify each ITAR-controlled commodity, provide the associated U.S. Munitions List (USML) category number(s), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. Firm agrees that if it fails to notify the University that it is providing ITAR-controlled items, data or services, it shall reimburse the University for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data or services.

DD. **COOPERATIVE PROCUREMENT / USE OF AGREEMENT BY THIRD PARTIES:** It is the University's intent to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University-related foundation (Additional Users) may access this Agreement if authorized by Firm.

To that end and if agreeable with the Firm, upon written request from Additional Users the Firm may allow access to the contract. Although the University desires to provide access on such contract to Additional Users, the Firm is not required to provide such access. A Firm's willingness to provide this access to Additional Users, will not be a consideration in awarding this contract. Although the Additional Users have access to any resulting contract, Additional Users are not bound to use the contract and any use of the contract is strictly optional. If the Additional Users choose to access the contract and the Firm agrees to such access, the terms and conditions of the contract will be in full force and effect as between the Additional Users and the Firm. VCU will have no responsibility for the resolution of any contractual disputes, or for payment for services rendered which may arise from an Additional User accessing the contract. The Firm understands and agrees that it shall not have any recourse against VCU with respect to any claim it may have against another Additional User that accessed this contract.

EE. **SUBCONTRACTS**: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Firm desires to subcontract some part of the work specified herein, the Firm shall furnish the University with the names, qualifications and experience of their proposed subcontractors. The Firm shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.

FF. **VCU CAMPUS COMPLIANCE**: Any Firm personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use, and conduct within such facilities. Please note that VCU is a smoke and tobacco-free campus (VCU Smoke and Tobacco-Free Campus Policy). In addition, if on-campus access, identification cards, or parking are required to perform or meet Firm's obligations under this Agreement, the Firm shall comply with all applicable University procedures:

- Information on University identification cards is available at: https://cardservices.vcu.edu/
- Building access requirements are outlined at: https://cardservices.vcu.edu/access-control/building-access/
- Contractor parking information is available at: https://parking.vcu.edu/parking/contractors/

All costs associated with obtaining on-campus University identification, access credentials, background checks, or parking are the responsibility of the Firm unless otherwise stated in writing by the University.

GG. **CRIMINAL BACKGROUND INVESTIGATION**: If Firm employees and agents will be on the VCU campus, or have access to protected data as defined herein, Firm must comply with the following: Firm shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and/or temporary, who may have access to VCU confidential or proprietary information, or data about VCU personnel or students, have passed a criminal background check pursuant to the *Virginia Code* § 2.2-1201.1. Criminal background checks shall comply with the standards set forth in VCU's employment policies found at:

https://policy.vcu.edu/doctract/documentportal/08DA32A63EDBCEAAB4962445672CE290

Specifically, Firm shall ensure an investigation is conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven (7) years. Convictions related to drugs, violence and/or sexual behavior are generally considered job related due to the nature of the VCU environment and the need to provide reasonable levels of protection for students, patients, employees, visitors, and institutional resources.

HH. **INTELLECTUAL PROPERTY RIGHTS/DISCLOSURE**: Unless expressly agreed to the contrary in writing, all goods, products, materials, documents report, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by Firm (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. The Parties agree that any such intellectual property created as a result of this agreement shall be deemed as a Work-for-Hire, as defined under federal copyright law. For the avoidance of doubt, Firm retains all rights in its pre-existing intellectual property, including its proprietary tools, methods, processes, know-how, templates, and any other intellectual property developed outside the scope of this Agreement (including all trade names and logos of Firm). Firm warrants to the University that the University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from this Agreement and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims.

Firm will execute any assignments or other documents needed for the University to perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

II. **BRAND STANDARDS**: Firm warrants that any Creative Work produced for the University (1) will comply with the University's brand standards and (2) in its end application, will fit the visual look and feel of the overall brand aesthetic, brand concept, color palette, visual effects, photographic and video style standards, and make correct use of all marks including logos and identity components. Firm agrees that the University, in its sole discretion, will determine Firm's compliance with this Provision. Creative Work includes, but is not limited to: websites, applications, electronic communications, newsletters, advertisements, mailings, magazines, and other communication materials (digital and print) produced for the University. For additional guidance, Firm should consult the VCU Brand Guidelines at https://brand.vcu.edu/vcu-university/guidelines (requires registration) or contact University Trademark and Licensing (trademarks@vcu.edu.)

JJ. **TRADEMARKS/LOGOS AND PROMOTIONAL ACTIVITY**: The University retains all rights, title and interest to its trademarks, logos and other intellectual property. Firm shall obtain approval in writing from the VCU Division of University Relations prior to use of any VCU marks, name, or logos. During the Term of the Agreement, Firm may reference the University as a customer in sales and marketing materials and public statements ("Promotional Materials"), provided such Promotional Materials do not include opinions explicitly or implicitly attributed to the University about the quality of the goods and/or services provided to the University. In no event shall Firm request that the University or any University employee endorse Firm or Firm's goods and/or services. Promotional Materials may include the name "Virginia Commonwealth University" and VCU's approved institutional logo solely to identify accurately the University as an entity to whom Firm provides goods and/or services. Furthermore, the University grants Firm a limited, nonexclusive license to display the University's trademarks/logos solely as they are made available to Firm in connection with Firm's goods and/or services.

KK. **MARKETING AT VCU**: The University encourages Firm to appropriately and specifically market itself to applicable end-using University departments that may be interested in Firm's goods and/or services. However, Firm shall not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail.

LL. **RESERVED.**

MM. **RESERVED.**

NN. **INSTALLATION DELIVERY AND STORAGE**: If applicable, it shall be the responsibility of the Firm to make all arrangements for delivery, unloading, receiving and storing materials in a VCU building during installation. VCU will not assume any responsibility for receiving these shipments. Firm shall check with VCU and make necessary arrangements for security and storage space in the building during installation.

OO. **RESERVED.**

PP. **TAXES:** Firm acknowledges all sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Agreement shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

QQ. **AUDIT:** The Firm shall retain all books, records, and other documents relative to this Agreement for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials, excluding employment records maintained by Firm, during said period. Any audit of Firm shall take place only after reasonable prior notice, and shall take place during business hours.

RR. **RESERVED.**

SS. **ADDITIONAL SERVICES:** The University reserves the right to request the Firm provide additional services that may be required by the University during the Term of this Agreement. To the extent Firm is reasonably capable of performing such services, any such services will be provided under the same terms and conditions of this Agreement; provided, however, should the Firm engage another governmental entity through a cooperative process, as outlined in Section DD, or if the services for VCU are materially different than those set forth herein, Firm shall have the right to renegotiate (i) the financial structure so that the economic benefits anticipated to be realized by Firm as of the date of execution of the Agreement are preserved, and (ii) the legal and risk terms of the Agreement, so that in each instance they are customary for the scope of services being provided. Such additional services may include other services provided by the Firm.

TT. **RESERVED.**

UU. **INDEMNIFICATION:** Firm agrees to indemnify, defend, and hold harmless VCU, the Commonwealth of Virginia, and their officers, employees and agents from any claim, damage, liability, injury, expense or loss, including reasonable defense costs and attorneys' fees, to the extent directly arising from Firm's negligence under this Agreement. Accordingly, VCU shall promptly notify Firm of any claim or action brought against VCU in connection with this Agreement. Upon such notification, and at the request and direction of VCU and/or the Office of the Attorney General, Firm will immediately defend any such claim or action pursuant to the provisions and requirements of Virginia Code § 2.2-514.

VV. **CONFIDENTIAL INFORMATION**: "Confidential Information" means all information of a party ("Disclosing party") disclosed or made available to the other party ("Receiving party") that (i) is clearly marked or identified as such at the time of disclosure or within a reasonable time thereafter; or (ii) should be reasonably known by the Receiving party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure; provided, that VCU shall not provide Firm with information about VCU personnel and students of VCU to the extent such information is not available to the public domain in accordance with the laws of the Commonwealth of Virginia and FERPA. Firm shall use its reasonable efforts to prevent and protect Confidential Information from unauthorized use or disclosure, with at least the same degree of care that Firm uses to protect its own confidential and proprietary information, but in no event less than a reasonable degree of care under the circumstances. Each Party will only disclose the other Party's Confidential Information to its employees, consultants, or subcontractors only on a need-to-know basis, provided that such employees or subcontractors are subject to confidentiality obligations no less restrictive than those contained herein. Upon the completion of the services and upon request of VCU, Firm shall return all Confidential Information received in written format, including copies or reproductions or other media containing Confidential Information within seven (7) calendar days of such request.

WW. **FERPA:** VCU represents and warrants that VCU will not provide the Firm any student information that is an "education record" protected by the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, 34 C.F.R. Part 99, including a student's address, email address or phone number, which is protected by the Code of Virginia § 23.1-405(C).

XX. **LICENSE REQUIREMENTS:** Certain statutes and regulatory agencies require that some Firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. It is Firm's responsibility to comply with the rules and regulations issued by the appropriate regulatory agencies, and possess and maintain the appropriate licenses if applicable for the Services to be provided under this Agreement. A copy of any such applicable license and/or permit must be furnished upon request to the University or VASCUPP member institution.

YY. **FORCE MAJEURE:** Neither Party will be deemed in default or otherwise liable hereunder due to its inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, governmental restrictions, act of public enemy, embargo, war, act of God, or any municipal, county, state, national or international ordinance or law or any executive, administrative, judicial or similar order, including orders from any governing body (which order is not the result of any act or omission to act which would constitute a default under this Agreement), or any failure or delay of any transportation, power, or other essential thing required, or similar causes beyond the Party's control. Any delay in performance will be no greater than the event of force majeure causing the delay. If a Force Majeure event continues for 30 days and its determined such event prevents a Party's performance under this Agreement or renders future performance impossible, either Party may terminate this Agreement upon written notice to the other Party, without penalty and without liability for further performance, provided that: (a) there is sufficient advance written notice for Firm to comply with applicable law in withdrawing from services, and (b) if, after such termination but during the Term, the event of force majeure ceases and University desires to engage a third party to provide the same or similar services hereunder, Firm shall have the first right to perform such services under the terms of this Agreement. Upon such termination, any amounts paid by VCU for Services not provided shall be refunded on a pro rata basis.

ZZ. **APPLICABLE LAW AND COURTS**: This Agreement shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia without regard to choice of law principles. The Parties agree that all disputes arising under this Agreement shall be brought in the state or federal courts located in Richmond, Virginia. To the extent any provision of the Agreement is prohibited by Virginia law, or is otherwise not authorized by Virginia law, due to VCU's status as an agency of the Commonwealth of Virginia, such provision is null and void. Each party shall be responsible for its own legal fees and costs unless otherwise ordered by a court of law.

AAA. **FEDERAL TARIFFS:** In the event that a federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in Firm's costs to a level that renders performance under the Agreement impracticable, VCU may agree, at its discretion, to an increase to the purchase price for the affected good. No increase in purchase price may exceed the actual tariff imposed on the goods imported or purchased by the Firm that are provided to VCU under this Agreement.

1. Prior to VCU agreeing to a price increase pursuant to this provision, but excepting any price increases on food and beverage products purchased by Firm in furtherance of the services, the Firm must provide to VCU the following documentation, all of which must be satisfactory to VCU:

   a) evidence demonstrating: (i) the unit price paid by Firm as of the date of award for the good or raw material used to furnish the goods to VCU under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) Firm's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow VCU to verify that the tariff is the cause of the price change;

   b) a certification signed by Firm that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by VCU at a lower cost from a different source located outside of the country against which the tariff has been imposed;

   c) a certification signed by Firm that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Firm would otherwise be unable to perform under this Agreement without such price increase; and

   d) as requested by VCU, written instructions authorizing VCU to request additional documentation from Firm's suppliers to verify the information submitted by Firm.

   Firm shall keep VCU reasonably informed of any increases on food and beverage products purchased by Firm, including as a result of a tariff, which updates may be provided during regular meetings between the General Manager and VCU, or through the approved operating budgets.

2. If VCU agrees to a price increase pursuant to this provision, the parties further agree to add the following term to this Agreement:

   a) During the Term and for five (5) years after the termination of this Agreement, Firm shall retain, and VCU and its authorized representatives shall have the right to audit, examine, and make copies of, all of Firms books, accounts, and other records related to this Agreement, excluding any employment records, including, but not limited to those kept by the Firm's agents, assigns, successors, and subcontractors. Any audit of Firm shall take place only after reasonable prior notice, and shall take place during business hours.

In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in VCU's contract price shall be reduced by the same amount and adjusted accordingly.

Any material misrepresentation made or caused to be made by a Firm, increasing the price and/or costs in a payment obligation due from the University, may be deemed fraud under the law, including by not limited to the Virginia Fraud Against Taxpayers Act, and such misrepresentation may be subject to penalties and damages.

BBB. **PAYMENT TERMS UNIVERSAL APPLICATION:** Firm acknowledges and agrees that the payment method agreed to under this Agreement shall apply to all invoices and payments related to this Agreement.

Any Firm-requested changes must be submitted in writing and are subject to approval by the Office of Procurement Services. Firm may, at any time, upgrade to either the Virtual Card or Premium ACH (Paymode-X) payment method by coordinating with Bank of America or Paymode-X. These upgrades do not require an amendment to the Agreement but VCU reserves the right to reject or deny a change deemed not in the best interest of the University.

CCC. **MODIFICATION OF THE AGREEMENT:**

1. The parties may agree to modify the scope of the Agreement. An increase or decrease in the price of the Agreement resulting from such modification shall be agreed by the parties as a part of their written Agreement to modify the scope of the Agreement.

2. The Purchasing Agency may order changes within the general scope of the Agreement at any time by written notice to the Firm, with Firm's receipt acknowledged. Changes within the scope of the Agreement include, but are not limited to, things such as services to be performed. The Firm shall comply with the notice upon receipt. The Firm shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings.

3. Material, substantive modifications, changes, and amendments to the Agreement must be in a writing executed by authorized representatives of each party.

DDD. **TERMINATION OF AGREEMENT:**

1. Either Party may terminate this Agreement if the other Party materially breaches this Agreement and such breach is not cured within thirty (30) days after written notice to the breaching Party.
2. The parties may mutually agree in writing to terminate this Agreement prior to expiration. Any such agreement shall specify the effective termination date, transition responsibilities, treatment of inventory, settlement of outstanding amounts, and disposition of any unamortized approved capital commitments, if applicable. Provisions intended to survive termination shall survive. Any such early termination shall be without penalty, other than as outline under Section 5 Attachment F.

EEE. **ENTIRE AGREEMENT**: This is the entire agreement between the University (including University employees and other End Users) and Firm. The Agreement shall not be assignable by either party in whole or in part without the written consent of the other party, which consent shall not be unreasonably withheld or delayed; however, Firm or the University may, without the prior written consent of the other, assign this Agreement and/or its rights and obligations hereunder (a) to any person or entity who succeeds (whether by merger, consolidation or sale of assets or equity or the like) to all or substantially all of the business and properties of such party, or (b) in connection with a corporate restructuring, to any person who is an owner, parent, subsidiary or affiliate of such party, and who carries on the business of such party in substantially the same manner. Any assignee of Firm or VCU pursuant to the preceding sentence must agree in writing to assume the assignor's obligations, without modification, in whole or in part (as applicable), in order for such assignment to become effective. In the event that Firm enters into terms of use agreements or other agreements or understanding, whether electronic, click-though, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply. This Agreement may be executed in counterparts, each of which will be deemed an original, and both of which taken together will constitute one and the same document. Electronically transmitted signatures will be deemed originals for all purposes relating to the agreement.

ATTACHMENT B
SPECIFIC CONTRACTUAL PROVISIONS

A. **INSURANCE**: Firm shall procure and maintain for the duration of the Agreement, insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the Firm, its agents, representatives, employees or subcontractor. Beginning on the Commencement Date and continuing during the Initial Term of the Agreement and any Renewals or extensions thereof, the Firm, at the Firm's expense, shall keep in force, with an insurance company with a current A.M. Best's rating of no less than A-: VII, one which is authorized to transact business in Virginia, and in a form reasonably acceptable to the University, the following:

NOTE: '**X**'s indicate insurance is needed, whereas empty parentheses indicate insurance is not.

(X) *Commercial General Liability (CGL)*: Providing CGL coverage on an "occurrence" basis, including for (X) bodily injury liability including: death, assault or battery, (X) property damage liability for damage to property of third parties, (X) personal injury liability, (X) advertising injury liability, (X) contractual liability, (X) products / completed operations liability and (X) full liquor liability arising out of the service of liquor (e.g., Dram shop liability), with limits no less than One Million Dollars ($1,000,000) per occurrence and Five Million Dollars ($5,000,000) aggregate.

(X) *Automobile Liability*: Providing coverage on all vehicles (i.e., owned, non-owned, and hired) operate with combined minimum limits of liability of at least One Million Dollars ($1,000,000) per occurrence for bodily injury and property damage.

(X) *Workers' Compensation*: Providing coverage of at least the statutory amounts covering all employees, and employer's liability insurance with minimum limits of Five Hundred Thousand Dollars ($500,000) for each coverage part.

(X) *Employment Practices Insurance*: Providing coverage against claims made by any employee, former employee, or potential employee or third party who alleges discrimination (e.g., age, sex, race, or disability), wrongful termination of employment, harassment or any other employment practices-related injuries with limits of liability of at least One Million Dollars ($1,000,000).

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Commonwealth of Virginia, and Virginia Commonwealth University, its officers, employees, and agents are to be covered on the CGL policy with respect to liability arising out of work or operations performed including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this contract, the Firm's insurance coverage shall be primary insurance and any insurance or self-insurance maintained by the Commonwealth of Virginia, Virginia Commonwealth University, its officers, employees and agents shall be in excess of the Firm's insurance and shall not contribute with it.

Notice of Cancellation

Coverage shall not be canceled, except with thirty (30) calendar days prior written notice to the University and with notification of replacement converge where applicable.

Waiver of Subrogation

The Firm will grant to the University a waiver of any right to subrogation which any insurer of said Firm may acquire against the University by virtue of the payment of any loss under such insurance. The Firm will agree to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not University has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Any self-insured retentions must be declared to and approved by the University. University may require the Firm to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Firm must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

Verification of Coverage

The Firm shall furnish University with original and any subsequent certificates required by this agreement. All certificates and endorsements are to be received and approved by the University before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Firm's obligation to provide them. University reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

University reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

B. **DATA PROTECTION:** Sensitive, non-public "VCU Data" is strictly regulated by state or federal law. Such data includes but is not limited to: business, administrative and financial data, intellectual property, and patient, student and personnel data; provided, that, for purposes of this Agreement, VCU shall not provide Firm with any sensitive, non-public VCU Data. If the Firm providing services to VCU will receive, create, or come into non-incidental contact with VCU Data, the Firm agrees to execute a mutually-agreeable Data Protection Addendum ("DPA") reasonably limited to the scope of VCU Data provided. The Data Protection Addendum may be updated from time to time upon mutual written agreement of the parties. Further, the parties acknowledge and agree the Firm providing services to VCU will not receive, create, or come into non-incidental contact with patient or VCU health plan participant Protected Health Information as that term is defined in 45 C.F.R. § 160.103, and VCU shall not provide the foregoing categories of information to Firm.

C. **RESERVED**.

D. **EXCLUSIVE BEVERAGE AGREEMENT:** The University reserves the right to enter into and maintain exclusive agreements for the sale, distribution, sampling, or availability of beverages on University premises. Firm shall comply with all terms and conditions of any such exclusive agreements.

As of the Effective Date of this Agreement, the University has an exclusive agreement with Pepsi Bottling Group, LLC for the provision of the following beverage products: carbonated and non-carbonated soft drinks, fountain tea, bottled teas, bottled coffees, juices, isotonic beverages, and bottled water. The Firm shall ensure that only products supplied under the exclusive agreement are sold, distributed, sampled, or otherwise made available on University property.

The following beverages are expressly exempt from the exclusivity requirements set forth herein:

1. Non-bottled tap water and filtered water stations; hot chocolate; freshly brewed coffee and tea; fresh-squeezed juices; and smoothies;
2. Energy shots measuring less than three (3) ounces and milk;
3. VCU-branded bottled water distributed exclusively through VCU Catering, and Perrier® sparkling natural mineral water when required by branded restaurant concepts or for special catered events;
4. Beverage products required to meet brand standards at Taco Bell® and Starbucks® locations operating on campus;
5. Beverage products used as ingredients in proprietary recipes by on-campus dining operations, provided that such ingredients are not advertised or promoted as branded beverages;
6. Alcoholic beverages.

Notwithstanding the foregoing exemptions, no exempted beverage shall be advertised, promoted, or marketed on University property under any circumstances.

E. **DATA OWNERSHIP AND USE:** All data collected or generated in connection with its operations at the Facilities—including transaction-level sales data, customer/contact data, marketing opt-ins, purchase history, and any analytics derived from such data—shall remain the property of Firm. Any request for access to or use of such data shall be agreed in advance and subject to (i) the terms applicable to such data under any payment processing agreement pursuant to which the applicable data is collected, and (ii) a Data Protection Addendum to be negotiated in good faith by the parties. Subject to the foregoing, Firm shall provide VCU access to any anonymized transaction-level sales data and supporting records (including records of subcontractors and third-party caterers operating at the Facilities) reasonably necessary to verify amounts reported in the monthly Settlement Statement.

F. **ALCOHOL SALES AND LICENSING REQUIREMENTS:**

a. Licensing: The Firm must possess, or be eligible to obtain, and use best efforts to maintain during the Term, the appropriate Virginia Alcoholic Beverage Control (ABC) retail license(s) necessary for on-site alcohol sales at VCU-owned property.

b. Compliance: The Firm shall use best efforts to maintain these licenses in good standing for the duration of the Agreement as an Allowable Operating Expense.

c. Operational Plan: The Firm must provide a detailed plan for managing alcohol sales in strict compliance with Virginia state law and University policies. This plan must include:

i. Staffing & Training: Evidence of TIPS (or equivalent) training for all servers.

ii. Service Standards. Firm shall not sell or serve alcohol to (A) any person under twenty-one (21) years of age, (B) any person who appears to be intoxicated, or (C) any person at a rate or quantity that would be inconsistent with responsible service practices.

iii. Firm shall implement and document cut-off procedures for patrons showing signs of intoxication.

iv. Incident Reporting. Firm shall notify VCU in writing within twenty-four (24) hours of (A) any refusal-of-service incident resulting in a customer complaint, altercation, or involvement of VCU security or law enforcement; (B) any service to or attempted purchase by a minor; (C) any Virginia ABC investigation, citation, warning, or enforcement action; and (D) any known or alleged over-service incident resulting in hospitalization, arrest, or injury.

v. Performance Default. Any of the following shall constitute a material performance default under this Agreement: (A) a confirmed over-service incident resulting solely from OVG's negligence or violation of applicable law, resulting in serious injury or death, or (B) two (2) or more ABC regulatory citations in any twelve-month period related to responsible service. In the event of a foregoing Performance Default and prior to VCU exercising any termination rights hereunder: (a) Firm shall promptly initiate a cure and rectify such default in a reasonable period of time, and (b) Firm and VCU shall meet and establish a corrective action plan acceptable to VCU.

d. Liability: As specified in Attachment B, the Firm must maintain full liquor liability insurance (Dram Shop liability) with limits of at least $1,000,000 per occurrence and $5,000,000 aggregate.

G. **LOSS, SUSPENSION, OR REVOCATION OF LICENSE.** Firm shall notify VCU in writing within twenty-four (24) hours of any event that results in, or could reasonably be expected to result in, the suspension, revocation, non-renewal, or material limitation of any ABC license required to perform alcohol service at the Facilities. Upon any such event, Firm shall, at Firm's sole cost and expense, to the extent such event was in Firm's reasonable control:

a. immediately implement a remediation plan acceptable to VCU;

b. use its best efforts (including expedited retention of regulatory counsel at Firm's expense) to cure, restore, or replace the license within thirty (30) days; and

c. if Firm is unable to restore the license within thirty (30) days, cooperate in good faith with VCU to obtain alcohol service at the Facilities through an alternative licensed provider (including a VCU-designated third-party caterer), with Firm bearing any incremental cost of such alternative service relative to Firm's prior cost structure.

H. **TRANSITION ASSISTANCE:** Upon expiration or termination (for any reason), Firm shall provide transition assistance for up to ninety (90) days (or through the end of the then-current event schedule, if earlier), including (i) orderly handoff to VCU or a successor operator, (ii) transfer of operating manuals and procedures used for this account (provided that Firm shall retain all intellectual property rights thereto), (iii) delivery of final settlement statements, and (iv) delivery of capital equipment inventory, maintenance logs, and warranty information for items purchased or installed under Attachment and (iv) If Firm incurs costs in connection with the foregoing, VCU shall reimburse Firm for such costs within 30 days' receipt of invoice.

I. **RESERVED.**

J. **STAFFING PLAN CHANGE NOTICE AND REVIEW:** Firm shall provide VCU written notice of any material changes to the Staffing Plan that could reasonably be expected to affect service quality, including reductions in on-site management coverage or compensation assumptions for Key Personnel. Upon request, Firm will meet with VCU to review impacts and mitigation.

K. **FOOD SAFETY STANDARDS**.

a. **Compliance with Applicable Law.** Firm shall comply at all times with the Virginia Food Regulations (12 VAC 5-421), the U.S. Food Code, the U.S. Food Safety Modernization Act, the

FDA Food Code (current edition), and all applicable federal, state, and local food safety laws, regulations, and health department requirements. Firm shall obtain and continuously maintain, at Firm's own expense, all permits and licenses required for food service at the Facilities.

b. Notice to VCU. Firm shall notify VCU in writing within twenty-four (24) hours of (i) any "critical" or "priority" health department violation or enforcement action at the Facilities, (ii) any active product recall affecting Firm's inventory at the Facilities, or (iii) any complaint or report alleging illness arising from food or beverage served at the Facilities. Firm shall provide VCU copies of all related inspection reports and notices within two (2) business days.

c. VCU Remedies. A confirmed foodborne illness outbreak traced to Firm's grossly negligent operations at the Facilities, closure of Facility food service by a health authority for more than forty-eight (48) hours due to Firm's violation of law, or Firm's failure to cure a "critical" health violation within ten (10) days shall each constitute a material performance default under this Agreement. Firm's costs of defending or settling any claim arising from Firm’s violation of food safety law shall not be included as Allowable Operating Expenses.

ATTACHMENT C – SCOPE OF WORK (SOW)
Athletics Food & Beverage Operations

1. Purpose

Firm shall operate and manage VCU Athletics food and beverage services to support fan/guest experience and VCU revenue objectives for covered events and locations, consistent with the RFP purpose and this Agreement. VCU grants Firm the exclusive right and privilege to provide the Food and Beverage Services. Notwithstanding the foregoing, if Firm determines it cannot reasonably support any event(s), then VCU may grant to a party other than Firm the right to perform any Food and Beverage Services at or upon the Facilities; provided, however, Firm shall remain the exclusive provider of alcohol service in all instances.

2. Covered Facilities / Locations

At minimum, the following shall constitute the ("**Facilities**"), as more particularly described in Attachment C-1 hereto:

- Stuart C. Siegel Center
- Athletic Village, including the Soccer and Track & Field Stadium (name to be determined)
- Basketball Development Center

  Other VCU Athletics-controlled venues/areas used for covered events, as identified in writing by VCU from time to time shall be considered "Facilities" hereunder.

VCU hereby licenses to Firm the concession stands, customer serving locations, food preparation areas, vendor commissaries, kitchen and warehouse facilities, and other areas related to the foregoing as mutually agreed or reasonably approved by VCU and/or reasonably required by Firm to perform the Food and Beverage Services at the Facilities ("**Food and Beverage Areas**"), together with the improvements, equipment, and personal property upon or within such areas, along with the non-exclusive right to use the concourses, spectator seating areas, parking areas, common areas, loading areas, walkways, and other public areas of the Facility, solely for the purpose of providing Food and Beverage Services and subject to VCU operational, safety, and event requirements. Firm agrees to operate the Food and Beverage Areas with respect to all events at the Facilities, as reasonably requested by VCU, during hours as may be reasonably requested by VCU to adequately meet public demand.

Further, Firm shall have the right to use, subject to availability, all equipment owned or controlled by VCU existing within the Food and Beverage Areas as of the date hereof and/or subsequently added by VCU or Firm to such areas during the Term of this agreement. VCU represents that, to its knowledge, such equipment is in materially good working order as of the Commencement Date, ordinary wear and tear excepted, all such equipment is in good working order, and Firm agrees to exercise reasonable care when using such equipment, so as to avoid any damage to such equipment. Major Repairs or replacements of furniture, fixtures or equipment shall be paid for by VCU.

3. Core Service Lines

Firm shall provide, manage, and staff the following, as applicable per event and location (collectively, the "**Food and Beverage Services**"):

3.1 Concessions Operations

- Event-day concessions setup, staffing, service, and breakdown
- Menu development, pricing recommendations, and inventory planning
- Point-of-sale operations and controls
- Quality and food safety practices (including applicable permits and inspections)
- Alcohol service operations where permitted/authorized by VCU

3.2 Catering Services

- Catering for VCU Athletics team meals and Athletics departmental functions
- Catering for University-hosted functions and special events occurring at the Facilities (as directed/approved by VCU)
- Drop-off, buffet, plated, and reception-style service formats as needed
- Staffing, equipment, rentals coordination (if applicable), and service management

3.3 Premium / Suites / Club Services

- Premium food and beverage offerings, including all-inclusive premium packages where applicable
- Suite/club pantry stocking, replenishment, and service staffing as needed

4. Staffing & Management Requirements

Firm shall provide an on-site management team and event staffing levels sufficient to meet program needs. At a minimum, Firm will:

- Assign a primary on-site **General Manager** responsible for overall program operations and serving as VCU's primary operational point of contact.
- Assign culinary leadership (e.g., **Executive Chef** or equivalent) responsible for culinary standards, menu execution, and catering production.
- The General Manager and Executive Chef are deemed the "**Key Personnel**". Firm shall not replace Key Personnel without VCU's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed; <u>provided</u>, however, in the event of a vacancy in a Key Personnel position, Firm may temporarily fill such position with an interim Key Personnel for up to ninety (90) days without the necessity of obtaining

VCU's approval. VCU may request replacement of Key Personnel for cause (including repeated KPI failures, misconduct, or material failure to coordinate effectively with VCU), and, upon such request, Firm shall promptly perform an internal investigation and, subject to applicable law and Firm's employment policies, in good faith consult with VCU on appropriate remedial action.

For purposes of Attachment B, "Staffing Plan" means Firm's internal staffing model for on-site management coverage and Key Personnel compensation assumptions for this program.

5. Operating Standards / Controls

Firm shall implement and maintain:

- Written event operating plans (staffing, menus, timing, service points)
- Cash handling procedures and internal controls appropriate for a public university environment
- Coordination protocols with VCU Athletics, venue management, security, and facilities teams
- Customer-service standards (queue management, speed of service targets, issue escalation)

6. Reporting & Business Reviews (minimum deliverables)

Firm shall provide (at minimum):

- **Monthly operating report**: sales by category, expenses by category, labor, and summary of net results for the period
- **Event-level recap** for major events (as defined by VCU) including sales, staffing, notable issues, and corrective actions
- **Quarterly business review** with VCU to review performance, guest feedback, pricing strategy, and improvement plan

7. Key Performance Indicators (KPIs).

Prior to the start of each Contract Year, the parties shall mutually agree in writing upon Key Performance Indicators (KPIs), which may include both qualitative and quantitative measures. If the parties are unable to decide on updated yearly KPIs in advance of each Contract Year, the Parties agree that the yearly KPIs in effect from the prior Contract Year shall remain in effect for such subsequent Contract Year. Determination of the yearly KPIs shall not be unreasonably withheld or delayed by either party. Following each Contract Year, the parties shall meet and evaluate Firm's performance of such KPIs. Failure to meet KPIs for two (2) consecutive months in any Agreement Year shall, if requested by VCU, require a corrective action plan reasonably acceptable to VCU, shall be VCU's initial remedy for ordinary KPI failures and shall not limit

VCU's rights or remedies for repeated, material, or uncured performance failures or any other breach of this Agreement.

ATTACHMENT C-1 - FACILITIES

[See Attached]

ATTACHMENT D – FINANCIAL TERMS
Athletics Food & Beverage Operations

1. Definitions

1.1 "Gross Sales." Total receipts by Firm from food and beverage sales and services at the Facilities for the period, less all federal, state, and local sales, use, or excise taxes, and other direct taxes collected from customers and remitted to the taxing authority. Gross Sales shall not include the gross receipts of any Subcontractor or third-party caterer. However, any commissions, fees, or net revenue actually received by Firm from any Subcontractor (including any third-party caterer pursuant to Section 4.7) shall be included in Gross Sales.
1.2 "Net Operating Profit" (or "Net Operating Revenues/Profits"). For any period, Gross Sales minus Allowable Operating Expenses, each as defined and treated in Section 4 (Allowable Operating Expenses; Exclusions; Treatment) below.
1.3 "Accounting Period." A calendar month.
1.4 "At-Cost Catering." University athletics-funded catering orders (e.g., team meals, staff functions). This classification does not apply to add-on food and beverage orders purchased by suite holders or guests, which shall be treated as Gross Sales subject to standard commissions.
1.5 "Cost" means the cost of all food, beverages, and related items used in providing the services (including disposables, and a reasonable allocation for bulk or high-volume inventory already in stock), a reasonable share of centralized service costs (e.g., POS maintenance, inventory management, etc.), and all related labor costs, including front- and back-of-house staff and a proportional share of any salaried employee's compensation and benefits involved in providing or overseeing the services.
1.6 "Operating Budget" means a line-item budget for the Facilities that includes a projection of the Gross Sales and Allowable Operating Expenses, presented on an annual basis.

2. Management Fee

Firm shall receive a management fee equal to 4% of Gross Sales for each Accounting Period (the "**Base Fee**"). The Base Fee will be paid to Firm on a monthly basis as set forth in Section 6 below. For the avoidance of doubt, in calculating the Gross Sales, Firm shall set aside taxes collected from customers and remit to the applicable taxing authority.

3. Incentive Fee / Profit Share

For each Agreement Year, Net Operating Profit shall be shared as follows (the "**Incentive Fee**"):

- Net Operating Profit of $0 to $200,000: 100% to VCU / 0% to Firm
- Net Operating Profit of $200,000 to $800,000: 95% to VCU / 5% to Firm
- Net Operating Profit of Over $800,000: 90% to VCU / 10% to Firm

Firm shall be entitled to receive the Incentive Fee, if any, monthly as set forth in Section 6.

By way of example, if in any Contract Year the Net Operating Profit equals $400,000, then Firm shall be entitled to $10,000 as the Incentive Fee (0% of the first $200,000 and 5% of the second $200,000.)

4. Allowable Operating Expenses; Exclusions; Treatment

4.1 Allowable Operating Expenses. "Allowable Operating Expenses" means all expenses incurred by Firm in connection with its operation of the food and beverage services, as described in the Scope of Work, at the Facilities, including, but not limited to the following: (a) the cost to Firm of the sale of food and beverage items and the performance of Firm's duties under this Agreement, including without limitation (i) personnel and payroll costs, including applicable taxes and benefits, as well as pre-approved relocation costs, severance, and bonuses with respect to all on-site management, administrative staff, independent contractors, consultants and all other on-site employees, (ii) product costs, (iii) cost of permits and licenses, including without limitation the cost of securing all alcohol permits and licenses, (iv) all taxes paid by Firm hereunder on the sale of concession items, (v) equipment rental costs, (vi) cost of equipment repairs and maintenance performed by Firm or a contractor of Firm, (vii) insurance costs (which shall be allocated by Firm to the Facilities in a reasonable and equitable fashion) and bonding costs, (viii) office supplies, printing costs and postage, (ix) telephone charges, (x) cost of utilities, (xi) cost of cleaning supplies and pest control, (xii) laundry costs, (xiii) armored car, (xiv) accounts payable processing and audit fees, (xv) cost of serviceware and paper supplies, (xvi) trash removal costs, (xvii) dues, subscriptions and membership fees, (xviii) pre-approved travel, food and lodging costs, (xix) security expenses, (xx) computer costs, (xxi) uniform costs, (xxii) advertising and marketing costs, (xxiii) cost of ice, (xxiv) payments to sub-contractors engaged by Firm hereunder, (xxv) decorating costs, (xxvi) payroll processing expense, (xxvii) bank charges, (xxviii) pre-approved temporary housing and relocation expense, (xxix) pre-approved employment agency fees, (xxx) reserved, (xxxi) PCI-DSS compliance costs; (xxxii) time and labor management system costs, and (xxxiii) the Monthly Amortization Amount, and (b) the Base Fee.

Repair and Maintenance Threshold. Allowable Operating Expenses shall include the cost of routine maintenance and repairs; provided, however, that any single repair or replacement costing in excess of $1,200 per incident shall be deemed a Capital Expense and shall not be charged as an Allowable Operating Expense without VCU's prior written approval.

4.2 Excluded Costs. Allowable Operating Expenses exclude: (i) Firm's corporate overhead and home-office allocations not directly attributable to the Facilities; (ii) Firm's income taxes; (iii) Firm's attorneys' fees,; and (iv) costs arising directly from Firm's negligence, willful misconduct, or noncompliance with this Agreement. The foregoing costs shall be borne by Firm.

Further, "Allowable Operating Expenses" shall not include debt service, the cost and expenses for which shall, in addition to Capital Expenses (as defined in the Master Agreement), be borne solely by VCU.

4.3 Documentation and Audit Support. Firm shall maintain itemized records sufficient to support its payment of the Allowable Operating Expenses and provide reasonable supporting detail upon request.

4.4 Allocations. Any shared or allocated cost must be (i) allocated using a reasonable, consistently applied methodology, and (ii) supported by backup showing the calculation.

4.5 Rebates, Credits, and Recoveries. All rebates directly attributable to the Facilities (and not, for the avoidance of doubt, Firm corporate rebates), credits, discounts, allowances, promotional funding, and recoveries relating to the Facilities' operations (including supplier rebates and card/processor incentives) shall be treated as reductions of expense (or increases to profit) in the period earned or received.

4.6 Merchant Processing Fees; Chargebacks; Refunds. Merchant processing fees shall be considered an Allowable Operating Expense. Chargebacks and refunds are managed on an individual basis, such that the amount of the chargeback or refund will not be reflected on the financial statements as amounts received by Firm. Chargebacks and refunds shall be documented and reflected as reductions to Gross Sales for the applicable period, with reasonable supporting records provided upon request.

4.7 Third Party Caterers. To the extent that VCU, with Firm's prior written approval, permits or engages a third-party caterer to provide food and services at the Facilities (excluding alcohol sales, for which Firm will remain the exclusive provider), Firm shall be entitled to receive an amount equal to 12% of such third-party caterer's net sales, which shall count towards Gross Sales hereunder.

4.8 Operating Budget. Firm agrees that at least 30 days prior to the Stub Contract Year, and no less than 60 days prior to the commencement of each subsequent Contract Year in respect of such Contract Year, it will prepare and submit to VCU its proposed Operating Budget for such Contract Year. Each Operating Budget shall include Firm's good faith projection of Gross Sales and Allowable Operating Expenses, presented on a monthly and annual basis, for the upcoming Contract Year. VCU agrees to provide Firm with all information in its possession necessary to enable Firm to prepare each Operating Budget.

Each Operating Budget shall be subject to the review and approval VCU, which approval shall not be unreasonably withheld or delayed. If events occur during any Contract Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Firm may submit an amendment to such budget for review and approval by VCU, which approval shall not be unreasonably withheld or delayed. If VCU fails to approve any Operating Budget (or any proposed amendment thereto), VCU shall promptly provide Firm the specific reasons therefor and its suggested modifications to Firm's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties. Firm shall use all reasonable efforts to manage and operate the Food and Beverage Services in accordance with the Operating Budget. However, VCU acknowledges that notwithstanding the Firm's experience and expertise in relation to the provision of food and beverage services at facilities similar to the Facilities, the projections contained in each Operating Budget are subject to and may be affected by changes in financial, economic, and other conditions and circumstances beyond the Firm's control, and that Firm shall have no liability if the numbers within the Operating Budget are not achieved.

4.9 Administrative and Risk Allocation Costs. Each Contract Year, Firm shall include in the Operating Budget a line-item of funds that may be used for administrative and risk allocation costs including, and without limitation and to the fullest extent permitted by law, the cost of settling claims arising out of or related to the Food and Beverage Services; provided, however, that (a) in no event shall such amounts be utilized to pay for Firm's attorneys' fees, and (b) nothing shall limit VCU's ability to recover costs from Firm in accordance with Section UU of Attachment A. If Firm incurs risk allocation costs in excess of the allocated amounts in the Operating Budget, then such excess amounts shall be considered Firm's costs and VCU shall have no obligation to reimburse Firm therefor.

5. Operating Losses (monthly)

a) **"Operating Loss"** means a negative Net Operating Profit (*i.e.*, the amount by which Allowable Operating Expenses exceeds Gross Sales) for a monthly Accounting Period; provided, that for purposes of calculating Firm's share in Operating Losses pursuant to Section 5(b), the calculation shall exclude the Monthly Amortization Amount and the Base Management Fee, such that Firm does not share in those Allowable Operating Expenses that are attributable to amounts owed by VCU to Firm hereunder. Except as set forth in Section 5(b) below, any Operating Losses under this Agreement shall be borne by VCU.

b) Loss Sharing. Without limiting Firm's right to receive the Base Fee and the Monthly Amortization Amount, any Operating Loss shall be shared ninety percent (90%) by VCU and ten percent (10%) by Firm. By way of example only, if in any given monthly Accounting Period there is $100,000 in Gross Sales and $120,000 in Allowable Operating Expenses (including (a) a $6,000 Monthly Amortization Amount and (b) the $4,000 Base Fee), resulting in a $20,000 Operating Loss then, Firm shall share $1,000 of such Operating Loss (10% of $10,000 ($20,000 Operating Loss minus $4,000 Base Fee minus $6,000 Monthly Amortization Amount)).

Notwithstanding the foregoing, Firm shall not be responsible for Operating Losses to the extent such losses result from material changes to the assumptions or underlying conditions on which either (1) the Proposal or (2) the Operating Budget (including, and without limitation, any temporary closure of the Siegel Center or a material decrease in events at the Facilities. For purposes of this Section 5(b), a material decrease shall include a Contract Year with fewer than 20 special events, including concerts, family shows, and private events (*i.e.*, a 33% decrease from the 30 special events projected in VCU's Addendum to the RFP.)

c) Funding/Settlement. Firm shall pay all Allowable Operating Expenses from the Gross Sales generated under this Agreement. To the extent that Gross Sales are insufficient to cover Allowable Operating Expenses, Firm agrees to advance its own funds to cover any such Operating Losses, except that in no event shall Firm be obligated cover Operating Losses either (a) in excess of $100,000 or (b) for a period longer than 6 months in any Contract Year. If at any point Operating Losses exceed $100,000 or if Firm has carried Operating Losses for 6 months, then Firm shall notify VCU and VCU shall be required, within 2 business days of receiving such notice, to pay Firm an amount equal to the Operating Losses, subject to any deductions pursuant to Section 5(b) above.

d) No Carryforward / No Offset. Operating Losses shall not be carried forward to offset Net Operating Profit in any subsequent Accounting Period or Agreement Year, and shall not be used to reduce incentive fee/profit share amounts otherwise due for a later profitable period.

5. At-Cost Catering Pricing and Billing. For At-Cost Catering, Firm will provide services at Cost plus a 5% management charge applied to each order, and this 5% charge is applied to the operating P&L of the VCU food and beverage program (not paid directly to Firm as a separate fee).

6. Settlement Statement; Records; Audit Support

6.1 Monthly Settlement Statement. Within 15 days after each Accounting Period, Firm shall provide a settlement statement showing Gross Sales, Allowable Operating Expenses (including the Base Fee), the Incentive Fee (if applicable), and the resulting amount due to VCU or Firm for that period.

6.2 Books and Records. Firm shall maintain complete and accurate books/records supporting the settlement statement and shall provide reasonable access for VCU review/audit in accordance with Attachment A/Attachment B.

6.3 Independent Review. Upon VCU's reasonable written request, but no more than once per Contract Year, Firm shall deliver to VCU an annual financial statement covering the Facilities for the most recently completed Contract Year, reviewed by an independent CPA reasonably acceptable to VCU, within ninety (90) days after such request. The cost of such review shall be treated as an Allowable Operating Expense.

6.4 Payment of Fees. Firm shall be entitled to receive its Base Fee and the Incentive Fee (if any) monthly, on or about the 15th day following each Accounting Period. On or about the 15th day following the end of each Contract Year, Firm shall remit to VCU the Net Operating Profit (if any) to which VCU is entitled (after deducting from such Net Operating Profits the Incentive Fee, any Operating Losses advances by Firm pursuant to Section 5(b), and any other amounts due to Firm hereunder.)

ATTACHMENT E – PRO FORMA

[See Attached]

Pro Forma Estimate

	Year 1	Year 2	Year 3	Year 4	Year 5	5 YEAR TOTAL	Year 6	Year 7	Year 8	Year 9	Year 10	FULL TERM TOTAL
Revenue												
Concessions Sales	$ 2,366,695	$ 2,485,030	$ 2,609,281	$ 2,687,560	$ 2,768,187	$ 12,916,753	$ 2,851,232	$ 2,936,769	$ 3,024,872	$ 3,115,618	$ 3,209,087	$ 28,054,332
Catering Sales	$ 601,574	$ 631,652	$ 663,235	$ 683,132	$ 703,626	$ 3,283,218	$ 724,735	$ 746,477	$ 768,871	$ 791,937	$ 815,695	$ 7,130,933
Subcontractor Sales (Net)	$ 15,966	$ 16,445	$ 16,938	$ 17,447	$ 17,970	$ 84,766	$ 18,509	$ 19,064	$ 19,636	$ 20,225	$ 20,832	$ 183,033
Other Income (Net)	$ 135,668	$ 142,265	$ 149,185	$ 153,661	$ 158,271	$ 739,050	$ 163,019	$ 167,910	$ 172,947	$ 178,135	$ 183,479	$ 1,604,540
Total Revenue	$ 3,119,903	$ 3,275,392	$ 3,438,640	$ 3,541,799	$ 3,648,053	$ 17,023,787	$ 3,757,495	$ 3,870,220	$ 3,986,326	$ 4,105,916	$ 4,229,094	$ 36,972,838
Cost of Sales	$ 690,921	$ 725,467	$ 761,741	$ 784,593	$ 808,131	$ 3,770,854	$ 832,375	$ 857,346	$ 883,066	$ 909,558	$ 936,845	$ 8,190,044
Food and Beverage Gross Profit	$ 2,428,981	$ 2,549,924	$ 2,676,899	$ 2,757,206	$ 2,839,922	$ 13,252,934	$ 2,925,120	$ 3,012,874	$ 3,103,260	$ 3,196,358	$ 3,292,248	$ 28,782,793
Payroll Expense												
Management Salaries	$ 255,642	$ 263,311	$ 271,210	$ 279,347	$ 287,727	$ 1,357,236	$ 296,359	$ 305,250	$ 314,407	$ 323,839	$ 333,554	$ 2,930,645
Variable Wages	$ 351,279	$ 361,818	$ 372,672	$ 383,853	$ 395,368	$ 1,864,990	$ 407,229	$ 419,446	$ 432,029	$ 444,990	$ 458,340	$ 4,027,025
Management Taxes & Benefits	$ 108,419	$ 111,671	$ 115,021	$ 118,472	$ 122,026	$ 575,609	$ 125,687	$ 129,457	$ 133,341	$ 137,341	$ 141,462	$ 1,242,897
Variable Taxes & Benefits	$ 60,822	$ 62,647	$ 64,526	$ 66,462	$ 68,456	$ 322,912	$ 70,509	$ 72,625	$ 74,803	$ 77,047	$ 79,359	$ 697,255
Total Payroll Expense	$ 776,162	$ 799,446	$ 823,430	$ 848,133	$ 873,577	$ 4,120,747	$ 899,784	$ 926,778	$ 954,581	$ 983,218	$ 1,012,715	$ 8,897,823
Other Operating Expenses	$ 274,443	$ 287,484	$ 301,157	$ 310,192	$ 319,498	$ 1,492,774	$ 329,083	$ 338,955	$ 349,124	$ 359,597	$ 370,385	$ 3,239,918
Depreciation and Amortization	$ 37,500	$ 68,056	$ 68,056	$ 68,056	$ 68,056	$ 309,722	$ 133,056	$ 133,056	$ 133,056	$ 133,056	$ 133,056	$ 975,000
NET PROFIT BEFORE FEES	$ 1,340,877	$ 1,394,938	$ 1,484,257	$ 1,530,826	$ 1,578,793	$ 7,329,690	$ 1,563,198	$ 1,614,086	$ 1,666,500	$ 1,720,486	$ 1,776,093	$ 15,670,052
Base Fee	$ 124,796	$ 131,016	$ 137,546	$ 141,672	$ 145,922	$ 680,951	$ 150,300	$ 154,809	$ 159,453	$ 164,237	$ 169,164	$ 1,478,914
Net Profit After Base Fee	$ 1,216,080	$ 1,263,922	$ 1,346,711	$ 1,389,154	$ 1,432,870	$ 6,648,738	$ 1,412,898	$ 1,459,277	$ 1,507,047	$ 1,556,250	$ 1,606,929	$ 14,191,139
Incentive Fee	$ 71,608	$ 76,392	$ 84,671	$ 88,915	$ 93,287	$ 414,874	$ 91,290	$ 95,928	$ 100,705	$ 105,625	$ 110,693	$ 919,114
CONSOLIDATED CLIENT PROFIT	$ 1,144,472	$ 1,187,530	$ 1,262,040	$ 1,300,239	$ 1,339,583	$ 6,233,864	$ 1,321,608	$ 1,363,349	$ 1,406,342	$ 1,450,625	$ 1,496,236	$ 13,272,025
Capital Investment	$ 375,000	$ 275,000	$ -	$ -	$ -	$ 650,000	$ 325,000	$ -	$ -	$ -	$ -	$ 975,000
Capital Investment - Underwritten by OVG	$ 175,000	$ 175,000	$ -	$ -	$ -	$ 350,000	$ 175,000	$ -	$ -	$ -	$ -	$ 525,000
TOTAL CLIENT VALUE	$ 1,694,472	$ 1,637,530	$ 1,262,040	$ 1,300,239	$ 1,339,583	$ 7,233,864	$ 1,821,608	$ 1,363,349	$ 1,406,342	$ 1,450,625	$ 1,496,236	$ 14,772,025

ATTACHMENT F – CAPITAL PLAN
Program Capital Investment and Deployment Schedule

1. Total Commitment and Structure

Firm's total capital investment commitment is up to (but not to exceed) $1,500,000 over the Term, structured as follows:

- $525,000 ("OVG Underwritten" portion)
- $975,000 ("Standard" portion)

2. Deployment Schedule

Firm will deploy capital according to the following schedule (unless modified by mutual written agreement) and amortize as set forth in Section 5 of this Attachment F:

- Upon Signing: $375,000
- Upon Signing (OVG Underwritten): $175,000*
- Year 2: $275,000
- Year 2 (OVG Underwritten): $175,000*
- Year 6: $325,000
- Year 6 (OVG Underwritten): $175,000*

Year 6 investment is due only if the Renewal Term is exercised, and is payable within thirty (30) days after the effective date of the Renewal Term. The actual amount invested by Firm hereunder is referred to herein as the "Capital Investment."

*These amounts designated above are collectively referred to as the "Underwritten Investment." As further described in Section 5 of this Attachment F, the Underwritten Capital Investment is not considered an Allowable Operating Expense or charged through the operating statement during the Term.

3. Approved Uses

Capital may be used for items that directly support food & beverage operations and guest experience at the Facilities, such as:

- Concessions equipment (POS hardware support, kitchen equipment, portable carts)
- Back-of-house improvements supporting production and speed of service
- Premium area service enhancements
- Other mutually approved projects consistent with the SOW

4. Project Approval, Ownership, and No Liens

4.1 Approval. Firm shall submit a capital project list (description, budget, timeline) for VCU's review and written approval before purchase/installation by VCU.
4.2 Ownership. Unless otherwise stated in writing, capital items purchased with the Capital Investment/installed under this plan become the property of Firm upon installation (or upon acceptance, if applicable), free of liens, until such time as the Capital Investment is fully amortized or the Buyout Amount (as described below) is paid in full to Firm, at which time title to such capital items will become vested in VCU. Each party agrees to execute all necessary documents to evidence the other party's ownership interest in accordance with this Section 4.2.

4.3 Coordination. Firm will coordinate with VCU for access, installation, inspections, and operational readiness.

5. Amortization / Early Termination Treatment

Amortization of the Capital Investment shall be treated as follows:

Capital Investment Installment Amount	Timing of Installment Investment	Amortization Schedule
$375,000	Within 30 days of execution of this Agreement	10-years, 1/120 per month; starting on the Commencement Date
$175,000*	Within 30 days of execution of this Agreement	10-years, 1/120 per month; starting on the Commencement Date
$275,000	Contract Year 2	9-years, 1/108 per month; starting on July 1, 2027
$175,000*	Contract Year 2	9-years, 1/108 per month; starting on July 1, 2027
If the Renewal Term is elected pursuant to Section C of the Master Agreement		
$325,000	Within 30 days of the start of the Renewal Term	5-years, 1/60 per month; starting on July 1, 2031
$175,000*	Within 30 days of the start of the Renewal Term	5-years, 1/60 per month; starting on July 1, 2031

The Capital Investment shall be amortized as contemplated by the chart above. All installments of the Capital Investment not indicated as an Underwritten Investment* (*i.e.*, such amounts that <u>do not</u> have an asterisk above) shall separately amortize as an Allowable Operating Expense (the "Monthly Amortization Amount") to be included in any Operating Budget. The Underwritten Investment shall be considered underwritten by Firm and accordingly shall not be included in the calculation of the Monthly Amortization Amount, but shall continue to amortize for purposes of the Buyout Amount as set forth below.

Early Termination Treatment

Upon the early termination of this Agreement, for any reason (including in connection with a breach by Firm or if VCU does not elect to exercise the Renewal Term), VCU shall immediately pay to Firm the unamortized amount of the Capital Investment (including *all* installments of the Capital Investment, and not just those that comprise the Monthly Amortization Amount) (the "Buyout Amount"). In the event that VCU fails to repay Firm the Buyout Amount upon termination or expiration of this Agreement in accordance with the terms hereof, the Buyout Amount shall accrue interest at the rate of 1.5% per month, or the highest rate permitted by law, whichever is less. In such event, and without limiting any other rights or remedies available to it, OVG may reenter the Facility, with or without process of law, and remove in a commercially reasonably manner the capital items purchased with the Capital Investment and retain or dispose of such capital items as Firm sees fit. Any such reentry and removal shall require VCU's prior written approval (not to be unreasonably withheld, conditioned, or delayed), shall occur at mutually agreed times in a manner that does not disrupt University operations or scheduled events, and shall include repair of any damage caused by the removal; provided nothing herein authorizes self-help or action without process of law. In such event, Firm shall retain its right to receive the Buyout Amount, but any proceeds from the sale of such capital items, less the cost to Firm of removing, storing, and selling such capital items, shall reduce the Buyout Amount.

6. Reporting

Firm shall provide quarterly status updates on capital projects (completed, in progress, deferred), spend-to-date, and expected deployment timing for upcoming phases.

OVG Hospitality - VCU FB Agr (Fee) (Siegel Center and Athletics Village) (Final)

Final Audit Report 2026-06-22

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