

UTSA CATERING TERMS OF AGREEMENT

All food service and catering providers (“**Caterer(s)**”) approved by The University of Texas at San Antonio (“**University**”) to offer catering services (the “**Services**”) on University’s premises must comply with the following terms and conditions (“**Terms of Agreement**”).

1. Caterer Representations & Warranties

1.1 Standards; Compliance with Laws and Policy. Caterer will use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of University in accordance with University’s requirements and procedures, in accordance with the highest standards of Caterer’s profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders (collectively, the “**Applicable Laws**”). In addition, Caterer will perform the Services and conduct all its operations on University’s premises in conformity with all applicable University Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs. For purposes of these Terms of Agreement, “**University Rules**” means (i) the *Rules and Regulations* of the Board of Regents of The University of Texas System (the “**Board**”) (found at <http://www.utsystem.edu/bor/rules.htm> and referred to herein as the “**Regents’ Rules**”); (ii) the policies of The University of Texas System (found at of Texas System (found at http://www.utsystem.edu/policy/lib_main.html); (iii) the institutional rules and regulations and policies of University (which may be found at www.utsa.edu/policies.html); and University’s *Standards of Conduct Guide*, which is located at <http://www.utsa.edu/acrs/Compliance/eguide/home.html>. Without limiting the foregoing, Caterer will comply, and cause its employees, representatives, agents, and subcontractors to comply, with University’s rules and policies related to personal health, security, environmental quality, safety, fire prevention, noise, smoking, parking and access restrictions.

1.2 Licenses, Registrations and Permits. Caterer warrants, represents, and agrees that Caterer and all individuals assigned to provide Services will obtain and maintain, at Caterer’s own cost, any and all approvals, licenses, filings, registrations and permits required by Applicable Law for the performance of the Services including, but not limited to, all required food handling permits.

1.3 Catering Guidelines. Caterer will perform the Services in accordance with any and all University Catering Guidelines promulgated by University’s Department of Campus Services.

1.4 Exclusive Beverage & Pouring Rights Agreements. University maintains exclusive contracts with beverage providers related to the dispensing, sale, advertising, and

promotion of soft drinks and related beverages at the University (“**pouring rights contracts**”). Notwithstanding any term to the contrary, Caterer understands and agrees that Caterer will comply with the requirements of University’s pouring rights contracts (currently with Pepsi). In addition, Caterer understands and agrees that the brand of any bottled water to be sold at any location will be subject to the prior written approval of University’s Assistant Vice President of Campus Services.

2. Safety & Sanitation

2.1 Compliance with Law. Caterer will demonstrate compliance with all Applicable Laws related to safety, health, sanitation, and use of food service areas and equipment.

2.2 Response to Emergencies. Caterer will immediately respond to and take corrective action for, all emergencies associated with the services, including but not limited to chemical spills, or fuel/motor oil spill. Caterer will ensure that there is no danger to the public health, safety or welfare due the services provided herein.

2.3 Sanitation and Cleanliness. Caterer will at all times maintain clean, orderly, and sanitary conditions (satisfactory to University in all respects) in all kitchens, food preparation areas, service areas, loading dock areas, cooking equipment, floors, chairs, tables, and any other locations associated with the Services. Caterer will leave University's premises in as clean a condition, or cleaner condition, than existed prior to the Caterer's entry on to University's premises. Caterer will not do or permit anything to be done on the University's premises beyond the scope of the Services unless approved in writing in advance by University.

Should University be required to utilize its personnel or another contractor to remove any food, utensils, dinnerware, trash, or otherwise perform any repairs or cleaning as a result of Caterer’s non-performance of services (collectively, "**University Maintenance**"), then Caterer will be invoiced for University Maintenance costs, and Caterer will promptly pay such invoice.

3. Security

Special security services, including but not limited to the provision of guards for inventory security or police officers for alcohol control, may be provided by University on request, subject to the condition that Caterer reimburse University for the cost of such services. Caterer understands and acknowledges that University’s peace officers are state licensed police officers, and any necessary police security will be provided only by University’s Police Department.

Caterer will cooperate with University's Police Department in all matters including the reporting of suspected security violations. Caterer will immediately report any evidence of security breaches or criminal activity to University's Police Department. **NOTWITHSTANDING THE PROVISIONS IN THE PRECEDING SENTENCE, UNIVERSITY WILL NOT BE LIABLE FOR, AND TO THE FULLEST EXTENT ALLOWED BY LAW, CATERER**

RELEASES UNIVERSITY, ITS AGENTS AND EMPLOYEES, FROM, ANY INJURY, DAMAGE OR LOSS SUFFERED BY CATERER, ITS AGENTS, EMPLOYEES, CONTRACTORS, OR INVITEES, ARISING OUT OF OR RELATED TO THE PROVISION OF SECURITY SERVICES EXCEPT WITH RESPECT TO THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SUCH SECURITY PERSONNEL.

4. Access to University Premises

4.1 Limited Access. Caterer, its employees, permitted subcontractors and agents, will have the right to use and access only those University facilities that may be reasonably necessary to perform its obligations hereunder and will have no right to use or access any other facilities of University. University will provide to Caterer reasonable access to the University's facilities, and will otherwise cooperate with Caterer, only as reasonably necessary for Caterer to perform its obligations under these Terms of Agreement.

4.2 Identification and Refusal of Entry. Caterer acknowledges that University has the rights to (a) require identification from any person on the University's premises, (b) refuse entry to persons having no legitimate business on the University's premises, and (c) eject any undesirable person refusing to leave peaceably on request. Caterer will cooperate with all authorized University representatives in the exercise of University's rights described in the preceding sentence.

4.3 Conduct on Premises. Caterer represents, warrants and agrees that it will conduct all of its activities on University's premises in a manner that (1) does not disturb or interfere with University's academic programs or administrative activities or any program or activity that is conducted by or is authorized by University or the U.T. System; (2) does not interfere with entry to or exit from a building, structure, or facility; (3) does not interfere with the flow of pedestrians or vehicular traffic on sidewalks or streets or at places of ingress and egress to and from University property, buildings, or facilities; (4) does not harass, or intimidate any person or persons; and (5) provides appropriate protection for the privacy of University's students, faculty, and staff, including without limitation, Caterer's adherence to all applicable laws and industry standards for preserving the confidentiality of personal financial information and personal identification numbers.

4.4 Caterer Vehicles. All Caterer's vehicles and equipment associated with the Services will be kept clean and maintained in good working condition. All such vehicles and equipment will be in compliance with all Applicable Laws. All Caterer's vehicles will also be in compliance with University Parking Rules and Regulations (ref. <http://www.utsa.edu/auxiliary/parking.html>). If Caterer requests a University parking permit, Caterer will request approval for such permit from the University's Assistant Vice President of Campus Services.

4.5 University Center. Caterer may be charged additional facility and use fees on Services provided within University's University Center Building ("UC"). Prior to providing Services within the UC, Caterer should coordinate with the UC Events Management Office (ref. <http://www.utsa.edu/events>) to determine any applicable use fees.

5. Alcoholic Beverages

5.1 Required Permits, Licenses, Registrations. For Services including alcohol, Caterer warrants, represents, and agrees that Caterer and all individuals assigned to provide Services will obtain and maintain, at Caterer's own cost, any and all approvals, licenses, filings, registrations and permits required by Texas Alcoholic Beverage Commission ("TABC").

5.2 University Approvals and Procedures. Caterer represents, warrants and agrees that alcoholic beverages will be (a) served and sold in completion of the Services only (i) when service of alcohol has been approved in writing by University prior to the specific catered event; (b) in compliance with Section 9.16 of University's Handbook of Operating Procedures (ref. <http://www.utsa.edu/hop/chapter9/9-16.html>).

5.3 Certified Training. Caterer will require that all employees serving alcoholic beverages in completion of the Services have prior TABC certified server training and provide proof of training at each function.

6. Fiscal Arrangements and Reporting

6.1 Fees. Caterer will provide a discount off of its standard menu price as described in Caterer's Application to Provide On-Campus Catering Services. With the exception of specific pricing required for customized menu items, Caterer will not charge University any service fees, gratuity fees, or any other fees unless such fees are expressly described on Caterer's published price menu.

6.2 Invoice Documentation and Payment. All invoices for Services will be payable to Caterer within thirty (30) days after receipt of invoice and acceptance of Service by University in accordance with the Texas Prompt Payment Act, currently codified in Section 2251, *Texas Government Code*. Each invoice will be accompanied by documentation listing Caterer's fees, standard menu price, and the provided discount. Caterer's will provide with its invoice such other documentation as reasonably requested by University, including Caterer's fee quote provided to University prior to the provision of Services. Payment for Services will not be unreasonably withheld or delayed. If University disapproves any amount submitted for payment by Caterer, University shall give Caterer specific reasons for disapproval in writing. Past due amounts shall be subject to an interest charge as specified by the Texas Prompt Payment Act. University (as an agency and institution of higher education organized under the laws of the State of Texas) is exempt from certain State sales taxes pursuant to Section 151.309 of the Texas Tax Code.

6.3 Business Reports. Caterer will submit to University Representative (ref. Section 7.1) within 30 days after the end of each calendar month, a business report of the Services provided for the preceding month that includes each University customer that has received Services for the month, the contact name for the University customer and the final amount of the services provided to the University customer. The reports will be presented in forms satisfactory to University Representative in all respects.

7. Personnel

7.1 Provision of Personnel & Customer Service. Caterer will provide a staff of properly trained and experienced personnel to ensure satisfactory performance of the Services. Caterer will assign to the project a designated representative who will be responsible for the administration and coordination of the Services.

All staff assigned by Caterer to perform the Services will maintain the highest standards of courtesy, service, and professionalism in the performance and completion of the Services. Caterer will train its employees in appropriate handling of any customer requests and complaints. Caterer will (i) treat all customers with respect and fairness; (ii) work diligently to resolve all customer complaints or concerns to the customer's satisfaction. Any unresolved customer service complaint will be referred to the University's Assistant Vice President of Campus Services or his or her designee ("**University Representative**"). Caterer and the University Representative will in good faith discuss possible resolutions for such a complaint.

7.2 Supervision. Caterer will provide adequate, competent supervision of its employees in completion of the Services. Neither University nor any other representative of University will supervise Caterer's employees or agents performing the Services; provided, however, the University's designated representatives will be available to Caterer to answer questions and provide necessary information.

7.3 Employee Conduct. Caterer will require all of its employees and personnel to adhere to Applicable Laws and all University Rules. Caterer will perform the Services without interfering in any way with the activities of University's faculty, students, staff, visitors or invitees.

7.4 Identification. In completion of the Services, all of Caterer's personnel will wear identification satisfactory to University in all respects.

7.5 Responsibility for Individuals Performing Services; Criminal Background Checks. Each individual who is assigned to perform Services will be an employee of Caterer or an employee of a permitted subcontractor engaged by Caterer. Caterer is responsible for the performance of all individuals performing any Services. Prior to commencing the Services,

Caterer will have an appropriate criminal background screening performed on all such individuals. Caterer will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide such services. Caterer will not knowingly assign any individual to provide Services on University's premises who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses. Prior to providing Services, Caterer will provide to the University Representative written certification of compliance with this Section.

8. Indemnification

CATERER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS COSTS, DAMAGES, AND LIABILITIES, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CATERER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR OR SUPPLIER OF CATERER IN THE EXECUTION OR PERFORMANCE OF THE SERVICES.

9. Insurance

9.1 Minimum Insurance. Caterer, consistent with its status as an independent contractor, will carry at least the following insurance in such form and with such companies as University finds reasonably acceptable in all respects, and in the following minimum amounts:

- (a) Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limit of not less than One Million Dollars (\$1,000,000) per accident or disease. Policies must include All States Endorsement and a waiver of all rights of subrogation and other rights against the University;
- (b) Comprehensive General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal and Advertising Injury, Completed Operations/Products Liability, Medical Expenses, Interest of Employees as additional insureds and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) per occurrence on an occurrence basis;
- (c) Liquor Liability with minimum limits of \$2,000,000 per each single occurrence.
- (d) Comprehensive Automobile Liability Insurance covering all owned, non-owned or hired automobiles to be used by Caterer, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.
- (e) Employee Crime Insurance to protect the assets, property, and contract earnings due University under these Terms of Agreement, of not less than One Million Dollars (\$500,000) per claim.

All such insurance policies, with the exception of Workers' Compensation and Employer's Liability, will be endorsed to designate University and the Board of Regents of The University of Texas System and their respective regents, officers, employees and agents as an Additional Insureds with respect to liability arising out of performance of Caterer's duties and obligations under these Terms of Agreement, and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to University, giving University the right to pay the premium to maintain coverage. If Caterer fails to pay any of the renewal premiums for expiring policies, University will have the right to make such payments and, at University's option, collect such amounts from Caterer or set off the amount thereof against any payment due to Caterer by University.

These insurance coverage's and limits are to be considered minimum requirements under these Terms of Agreement and will in no way limit the liability or obligations of Caterer under these Terms of Agreement.

9.2 Evidence. Caterer will deliver to University:

- (a) Certificates evidencing the existence of all such insurance promptly after the execution and delivery hereof and prior to the continued or additional performance of any Services; and
- (b) Replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, Caterer fails to pay any of the renewal premiums for the expiring policies, University will remove Caterer from its preferred Caterer list.

Such Certificates will name University as an Additional Insured, with the exception of Workers' Compensation and Employer's Liability, and will provide that the policies will not be cancelled until after thirty (30) days' unconditional, unqualified written notice to University, giving the University the right to pay the Premium to maintain coverage.

9.3 Period. The insurance policies required in Terms of Agreement will be kept in force for the periods specified below:

- (a) Commercial General Liability Insurance and Business Auto Liability, will be kept in force until receipt of final payment by the Caterer;
- (b) Workers' compensation Insurance will be kept in force until the Caterer's obligations have been fully performed and accepted by University in writing.

Caterer will provide University a full and complete copy of any insurance policy promptly upon request by University, and without charge to University.

9.4 Specific ITC Requirements. Caterers that apply for permission to hold functions on the Exhibit Floor of the Institute of Texan Cultures are required to have Employer's Liability in the amount of \$2,000,000.00.

10. Limitation of Liability

Except for University's obligation (if any) under these Terms of Agreement to pay Caterer certain fees, University will have no liability to Caterer or to anyone claiming through or under Caterer by reason of the execution or performance of the Services or these Terms of Agreement. Notwithstanding any duty or obligation of University to Caterer or to anyone claiming through or under Caterer, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of University, or The University of Texas System, or anyone claiming under University has or will have any personal liability to Caterer or to anyone claiming through or under Caterer by reason of the execution or performance of the Services or these Terms of Agreement.

11. Additional Statutory & Regulatory Provisions

11.1 Governing Law; Venue. These Terms of Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Bexar County, Texas, will be the proper place of venue for suit on or in respect of these Terms of Agreement.

11.2 Breach of Contract Claims. To the extent that Chapter 2260, *Texas Government Code*, is applicable to these Terms of Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by School and Caterer to attempt to resolve any claim for breach of contract made by Caterer that cannot be resolved in the ordinary course of business. The chief business officer of School will examine Caterer claim and any counterclaim and negotiate with Caterer in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of these Terms of Agreement by School nor any other conduct, action or inaction of any representative of School relating to these Terms of Agreement constitutes or is intended to constitute a waiver of School's or the state's sovereign immunity to suit; and (ii) School has not waived its right to seek redress in the courts.

11.3 TFER. Caterer will at all times comply with the requirements of the Texas Food Establishment Rules ("**TFER**"), currently codified in *25 Texas Administrative Code* 229.161-171, and 229.173-175.

11.4 Tax Certification. If Caterer is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Caterer certifies that it is not currently delinquent in the payment of any taxes due

under such Chapter, or that Caterer is exempt from the payment of those taxes, or that Caterer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

11.5 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Caterer agrees that any payments owing to Caterer under these Terms of Agreement may be applied directly toward any debt or delinquency that Caterer owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

11.6 Texas Family Code Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Caterer certifies that it is not ineligible to receive the award of or payments under these Terms of Agreement and acknowledges that the Services may be terminated and payment may be withheld if this certification is inaccurate.

11.7 Products and Materials Produced in Texas. Subject to existing contracts that Caterer entered into prior to University's acceptance of Caterer as a preferred University catering provider, Caterer covenants and agrees that as required by Section 2155.4441, *Texas Government Code*, in performing the Services and its other duties and obligations under these Terms of Agreement, the Caterer will purchase products and materials produced in Texas when the products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

11.8 State Auditor's Office. Caterer understands that acceptance of funds under these Terms of Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Caterer agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Caterer will include this provision in all contracts with permitted subcontractors.

11.9 Ethics Matters; No Financial Interest. Caterer and its employees, agents, representatives, and subcontractors have read and understand School's Conflicts of Interest Policy available at <http://www.utsa.edu/hop/chapter4/4-31.cfm>, School's Standards of Conduct Guide available at <http://www.utsa.edu/acrs/Compliance/eguide/home.html>, and applicable state ethics laws and rules available at www.utsyste.edu/ogc/ethics. Neither Caterer nor its employees, agents, representatives or subcontractors will assist or cause School employees to violate School's Conflicts of Interest Policy, provisions described by School's Standards of Conduct Guide, or applicable state ethics laws or rules. Caterer represents and warrants that no member of the Board of Regents has a direct or indirect financial interest in the transaction that is the subject of these Terms of Agreement.

11.10 Confidential Information; Public Information. All information owned, possessed or used by University that is communicated to, learned, developed or otherwise acquired by Caterer

in the performance of services for University, that is not generally known to the public, will be confidential and Caterer will not, beginning on the date of first association or communication between University and Caterer and continuing through these Terms of Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Caterer's own benefit or the benefit of another, any Confidential Information, unless required by Applicable Laws. Except when defined as part of the Services, Caterer will not make any press releases, public statements, or advertisement referring to the Services or the engagement of Caterer as an independent contractor of University, or release any information relative to the Services for publication, advertisement or any other purpose without the prior written approval of University. Caterer will obtain assurances similar to those contained in this Section from employees, representatives, agents, and subcontractors retained by Caterer.

University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General, with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, *Texas Government Code*.