

SERVICES AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM  
AND LAST SHOT XPRESSO, LLC

This Services Agreement (“Agreement”) is made as of June 5, 2023 (the “Effective Date”), with The Texas A&M University System (“A&M System”), an agency of the state of Texas, with principal offices located College Station, Texas, for the use and benefit of Texas A&M University Health Science Center (“TAMHSC), a health related institution under the administration of Texas A&M University (“Texas A&M”) on one side, and Last Shot Xpresso, LLC (“Provider”), with principal offices at Bryan, Texas. A&M System and Provider are sometimes hereafter referred to individually as a “Party” and collectively as the “Parties.

Provider and A&M System agree as follows:

**1. GENERAL SCOPE OF SERVICES**

1.1 **Contract Documents.** Except as otherwise provided herein, Provider will furnish all management, operations, labor, equipment, goods, and supplies necessary to provide food and beverage services within the EnMed Building (“Building”) located at 1020 Holcombe Blvd., Houston, TX 77030 in the manner described in this Agreement, and the other documents listed below and incorporated herein (“Contract Documents”):

- (a) This Services Agreement
- (b) Amendments and Addenda to this Services Agreement
- (c) Provider submitted proposal attached hereto and incorporated in for all purposes as Exhibit A – Scope of Services, including all subsequently submitted addenda, clarifications, revised offers and responses to questions (“Scope”).

**2. EXCLUSIVE RIGHTS AND EXCEPTIONS**

**2.1 Exclusivity.**

- a. A&M System grants to Provider, as an independent contractor, the exclusive right to provide and manage food operations (“Services” or “Food Service”) in the Building for the duration of this Agreement and the exclusive right to sell within the Building food products, non-alcoholic beverages and other such articles (“Products”) as shall be approved by A&M System subject to the terms of this Agreement.
- b. A&M System grants to the Provider under this Agreement exclusive use of the Food Service Preparation and Serving Area identified in Exhibit B, attached, and made a part hereof.

**2.2 Exceptions.**

- a. A&M System and Provider agree that A&M System may authorize food and beverage services (“Catering”) by persons other than Provider in the Building in connection with

the A&M System and TAMHSC events, including but not limited to meetings, conferences or other activities scheduled within the Building.

- b. A&M System reserves the right to add additional exclusive operating areas within the Building and will notify Provider of such carve out by unilateral written addenda to this Agreement.

### 3. TERM OF AGREEMENT

3.1 **Initial Term.** This Agreement shall commence on the Effective Date and shall terminate on the expiration of five (5) years from the Effective Date (the "Initial Term"), unless terminated earlier as provided in Section 18.

3.2 **Extension.** This Agreement may be extended for up to one additional five (5) year term upon written agreement by both parties. Any extensions shall be at the same terms and conditions plus any changes mutually agreed by A&M System and Provider in writing not less than ninety (90) days before the end of the Initial Term or subsequent extended term. The Initial Term and any extension or renewal are referred to collectively as the "Term."

### 4. PROVIDER RESPONSIBILITIES

4.1 **Buildout.** Provider shall engage a contractor (hereafter referred to as "Contractor" or "Albany Studio") for construction services ("Buildout") of the area defined in Exhibit B. The Buildout shall include all items listed on the breakdown from Albany Studio as Exhibit G.

4.1.1 The Buildout shall be considered a Capital Improvement and Section 8 shall apply. Performance and payment bonds are required from the Contractor per Article 5 of the Uniform General Conditions (UGC). Provider shall ensure that Contractor list The Board of Regents of The Texas A&M University System, and Texas A&M University as additional Obligees on the performance bond.

4.1.2 The A&M System and TAMHSC will provide general oversight, coordination, permitting and inspections with the Buildout as it deems necessary. Provider shall document and provide evidence to TAMHSC all applicable health and food safety requirements and codes are met prior to beginning of operations.

4.1.3 TAMHSC shall reimburse Provider for costs identified within Exhibit G according to the schedule below. Each of the three (3) payments shall be of equal value based on the total amount listed within Exhibit G.

1. Initial payment to be processed upon issuance of notice to proceed.
2. Upon 50% completion of work with verification and approval from TAMHSC.
3. Final payment upon successful completion of all work and approval from TAMHSC.

4.2 **Equipment.** Provider shall provide at their expense the equipment as identified in Exhibit C and all future equipment needed to provide the Services unless otherwise agreed to by TAMHSC.

### 4.3 **Management and Personnel**

4.3.1 Staffing Plan. Provider shall develop a staffing plan, to be approved by TAMHSC, for the provision of the Services. At a minimum, the plan shall require Provider to:

- a. Maintain a verified employment eligible staff of properly licensed, certified, trained and experienced personnel to ensure consistent, efficient and satisfactory performance of the Services;
- b. Assign an adequate number of personnel to ensure consistent, efficient and satisfactory performance of the Services;
- c. Notify A&M System of any changes in staffing levels from those specified in the staffing plan or otherwise described in the Contract Documents; any such changes must be approved by A&M System before becoming effective; and
- d. Provide sufficient back-up personnel in times of staff shortages due to vacations, illness, emergencies, and inclement weather to ensure consistent, efficient and satisfactory performance of the Services.

4.3.2 Roster.

- a. Each individual who is assigned to perform the Services under this Agreement will be an employee of Provider or an employee of a permitted subcontractor engaged by Provider. Provider is responsible for the performance of all individuals performing the Services under this Agreement. Prior to commencing the Services, Provider shall: (1) provide A&M System with a roster of every individual who may be assigned to perform the Services (“Roster”), and (2) perform appropriate criminal background and sex offender screenings on all those individuals (excluding Retained Employees). Provider shall determine on a case-by-case basis whether each individual assigned to perform the Services meets the screening requirements and restrictions of this Agreement, but Provider may not knowingly or negligently assign any individual to provide the Services who has a history of criminal conduct unacceptable for an A&M System facility, including violent or sexual offenses. The foregoing must be applied in accordance with federal law and the U.S. Equal Employment Opportunity Commission Guidelines.
- b. Provider shall ensure that the Roster contains all information as A&M System may reasonably request and shall provide such to A&M System upon request. The Roster shall include an indicator identifying all working retirees of the Texas Retirement System. Provider shall update the Roster each time the individuals assigned to perform the Services change. Prior to commencing performance of the Services, Provider shall provide A&M System a letter signed by an authorized representative of Provider certifying compliance with this Section 4.1.2. Provider shall provide A&M System an updated certification letter each time there is a change in the individuals assigned to perform the Services.
- c. Provider shall ensure that employment eligibility within the United States has been verified for each person listed on the Roster for employment.

4.3.3 Staff Availability. Provider will ensure that a designated principal of Provider shall be available to A&M System officials to respond to A&M System telephone calls or other communications in a timely and responsive manner.

4.3.4. Staff Expectations. Provider shall enforce appropriate coverage, grooming, hygiene, dress, and conduct codes for all its personnel who report to work at or who conduct business in an academic setting on A&M System premises. Employees of Provider not supporting or complying with these expectations may be required to be removed by A&M System.

4.3.5 Senior Management. Provider shall designate an onsite manager who shall be responsible for the performance of the Services. Any change to Senior Management must be communicated to TAMHSC prior to the effective date of this change.

4.3.6 Equal Opportunity. Provider shall not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, age, disability, genetic information or veteran status, in violation of federal, state or local law.

4.3.7 Labor Relations. Provider shall take immediate and reasonable steps to continue its provision of the Services in the event of any labor dispute or other action involving its employees.

4.3.8 Rules and Regulations. Provider agrees that its employees and agents shall comply with and observe all applicable policies, regulations, rules and procedures of A&M System concerning conduct that A&M System uniformly imposes upon A&M System's employees and agents. Such policies, regulations, rules, and procedures can be found at:

<https://www.tamus.edu/legal/policy/policy-and-regulation-library/> .

4.3.9 Employee Dishonesty. Provider shall provide evidence that Provider has in place a method by which Provider shall indemnify A&M System and its employees, students, faculty, and guests from any pecuniary loss that may be sustained as a result of any act of fraud, dishonesty, forgery, theft, embezzlement, or misappropriation on the part of Provider or any of its employees, agents, or subcontractors, directly or indirectly. Such protection may be in the form of an approved letter of credit or employee fidelity bond.

#### 4.4 **Training**

Provider shall be responsible for all food manager certification, food-handling licensure and training, safety training, development programs and other training for any Provider employees (including but not limited to Retained Employees), supervisors, managers or other personnel as may be necessary in connection with the provision of Services. All the content and timing of all training programs to be provided by Provider shall be provided to A&M System prior to implementation for comment and approval.

#### 4.5 **Sanitation and Compliance**

4.5.1 Provider shall comply with all applicable federal, state and local laws, regulations, ordinances and codes, including without limitation all licensing requirements and regulations with respect to food handling, and shall obtain all licenses, permits and approvals necessary for the performance of the Services. Provider shall also monitor its employees to ensure that each employee complies with each of the above requirements, is free of food-borne communicable

diseases and routinely practices good hygiene, including hand washing. The Facilities, Services and food prepared by Provider will at all times be subject to inspection by an authorized, capable person or persons designated by A&M System.

4.5.2 Provider shall maintain high standards of sanitation, housekeeping, food storage, food handling; and disposal of trash in regard to all Services contemplated by this Agreement. Provider shall be responsible for daily cleaning and routine preventive maintenance within (and immediately adjacent to) the Food Preparation and Service Areas and other areas where contracted services are provided and for all equipment used by Provider. Sanitation shall comply with all requirements of the Contract Documents.

#### **4.6 Marketing**

Provider shall, in consultation with TAMHSC, actively and aggressively market the Services to students, faculty and staff, including the use of social media, to ensure reaching the maximum number of students and creating the greatest interest in and awareness of the Facilities. Provider shall develop a marketing plan which will be presented to TAMHSC on an annual basis for approval, and such action plan shall not be implemented without the prior written approval of TAMHSC. Provider shall pay all costs associated with its marketing efforts.

#### **4.7 Nutrition Standards**

Provider shall post and have available upon request nutritional information for all menu items unless included on manufacturer's packaging. Provider shall also comply with all state and federal food labeling, packaging and storage laws, rules and regulations. Further, Provider shall include healthy food options and food options for patrons with dietary restrictions similar to the types of foods shown in the Contract Documents.

#### **4.8 Branded Concepts**

Provider shall not contract with any third party with respect to any branded food concepts, or move, modify or discontinue any existing or future branded food concepts, without A&M System's prior written consent. Exhibit D shall contain a list of all branded food and beverage concepts (if any) and the brand established distribution pricing of same. Pricing for the branded food concepts will be comparable with regional prices for similar food concepts.

#### **4.9 Exclusive Sponsorship**

4.9.1 Provider acknowledges that A&M System may from time to time enter into exclusive sponsorship, advertising, licensing, supply or similar agreements with sponsors, licensors, manufacturers and/or suppliers of various categories of products, goods or services, and that such agreements may impose upon A&M System certain restrictions with respect to advertising, use and sale of certain products, goods or services. Nothing set forth herein shall limit A&M System's right to enter into any such exclusive agreements. Provider further agrees that, upon reasonable written notice from A&M System, Provider shall not utilize, purchase, sell or advertise (or permit the utilization, purchase, sale or advertising) of any products, goods or services on or from A&M System premises, which may be in violation of any such exclusive agreement. Notwithstanding anything to the contrary in this Agreement, Exhibit E contains a list of products

that will not be prohibited by the exclusive agreements or by the PepsiCo Agreement (as defined below).

4.9.2 In acknowledgement of the preceding, Provider acknowledges that A&M System has an exclusive vending rights agreement with PepsiCo ("Pepsi Agreement"), which includes the exclusive sale of Pepsi products in vending machines in TAMHSC facilities. In recognition of this pre-existing agreement, Provider shall not serve beverage products that are contrary to the terms of the Pepsi Agreement unless agreed to otherwise in writing by PepsiCo.

#### **4.10 Telecommunication Services**

Provider shall be responsible for and shall pay all expenses for telecommunication services, both voice and data, including without limitation, all equipment installation, cellular phones, radios, fiber optics, internet service, local service, long distance service, taxes, monthly charges, and other telecommunication expenses, as applicable. A&M System will invoice Provider on a monthly basis for all telecommunication expenses incurred by A&M System on behalf of Provider, if applicable.

#### **4.11 Facilities Inspection**

Provider shall at all times allow authorized TAMHSC and A&M System personnel unlimited access to the Food Preparation and Service Areas and to all other facilities within the A&M System campus for any purpose whatsoever, including without limitation, maintenance of A&M System assets or for inspection or monitoring of the Services provided hereunder.

#### **4.12 Maintenance and Repairs**

Provider shall, at its sole cost and expense, be responsible for all maintenance and repairs (but not replacement unless caused by negligence or misuse by Provider) of the facilities, equipment (including A&M System equipment), and furnishings used by Provider in providing the Services, other than the structural maintenance and repairs to the Food Preparation and Service Areas to be performed by A&M System. A&M System will assist Provider in arranging for any repair of any A&M System provided equipment that is covered by a manufacturer's warranty.

#### **4.13 Preparation of Annual Plans**

4.13.1 Provider agrees to provide to TAMHSC an annual work plan for the operation of Services. The annual work plan for the initial contract year shall be delivered to TAMHSC within seven (7) days of commencement of this Agreement, and thereafter, on or before August 1 for each following contract year.

4.13.2 The annual work plan shall include information regarding Provider's anticipated operations for the following academic year, including but not limited to any proposed modification in the Services; significant personnel related issues (e.g. shrinkage, turnover, staffing level, etc.); projected and, when applicable, historical metrics reflecting, for example, number of patrons, meals, snacks, drinks, etc. served; proposed facility changes; references to any specific events or activities not included within the Contract Documents; anticipated advertising and promotional activities; proposed purchases of equipment and furnishings; proposed branding or concept changes; proposed marketing plans; meal plans and any changes to the meal plan designs.

4.14.3 The annual work plan shall be subject to review, revision and approval by TAMHSC. Upon approval, the work plan shall constitute the operating program for the Services provided by Provider for the academic year immediately following plan approval. Once approved by TAMHSC no changes shall be made to the annual work plan unless agreed to in writing by A&M System. Until an annual plan is approved, Provider will operate under the then current annual plan.

## **5. A&M SYSTEM'S RESPONSIBILITIES**

### **5.1 Food Preparation and Services Areas**

A&M System hereby grants to Provider the exclusive right to use the Food Preparation and Service Areas as shown in Exhibit B attached hereto and incorporated herein for all purposes as may be necessary and appropriate in providing the Services. A&M System shall permit Provider to have the use of all such equipment and Facilities in the performance of its obligations hereunder, subject to the duty to exercise reasonable care in the use thereof. Provider agrees that all equipment and items of equipment now or hereafter furnished by A&M System to Provider are the sole property of A&M System and Provider agrees not to change, deface, or remove any symbol or mark of identity upon said equipment or items of equipment furnished by A&M System.

### **5.2 Maintenance of Food Preparation and Service Areas**

A&M System shall, at its expense, be responsible for all structural maintenance and repairs to the Building, including Food Preparation and Service Areas, and required replacement of A&M System Equipment that A&M System determines, in its sole discretion, may be necessary or appropriate. To the extent funded as described in Section 9.7.1, Provider shall, at its own expense, be responsible for Operational Investments. Provider further agrees to indemnify and hold A&M System harmless from any and all repair or maintenance expenses incurred by A&M System as a result of any intentional or negligent acts or omissions of Provider, its employees, agents, borrowed servants, contractors, subcontractors, or personnel.

### **5.3 Utilities**

5.3.1 A&M System shall provide hot and cold water, electricity, air conditioning, heat, gas and other related utility services (including related maintenance), as may be reasonably necessary for the Provider to perform the Services and the efficient operation of the Food Preparation and Service areas. Provider shall pay to TAMHSC the amount of \$250 per month for these utility services to be due by the 5<sup>th</sup> of each month to begin the first month after commencement of operations. Non-payment of these utility services may be grounds for Termination of Cause per Section 18.

5.3.2 Provider shall exercise reasonable efforts to ensure conservation and efficient use of the utilities generally consistent with A&M System's historic levels of utility usage for similar facilities. A&M System may separately meter electrical, gas and/or water for the Food Preparation and Service Areas to monitor utility consumption by Provider. If A&M System determines that Provider is using higher utility consumption than is generally consistent with A&M System's historic levels of utility use for similar facilities, then A&M System may assess additional costs to Provider.

5.3.3 A&M System does not guarantee an uninterrupted supply of water, electricity, air conditioning, heat or gas, but it shall use reasonable efforts to restore utility service promptly following any interruption. A&M System shall not be liable to Provider or to any third party for any loss, damage, cost or expense that may result from the interruption or failure of any such service.

5.3.4 If, when required, telecommunication services, both voice and data, including without limitation, all equipment installation, cellular phones, radios, fiber optics, internet service, local service, long distance service, as applicable, shall be provided to Provider by A&M System.

#### 5.4 **Equipment**

A&M System shall provide to Provider, for use by Provider, the equipment, fixtures, facilities, supplies and materials listed on Exhibit C (if any), attached hereto and made a part hereof (the "A&M System Equipment"). Except as otherwise agreed among the Parties, A&M System shall retain ownership of the A&M System Equipment. After the Effective Date, Provider shall provide, at its sole expense, all equipment, fixtures, supplies and materials necessary for the Services not already provided by A&M System under this Agreement.

#### 5.5 **Contract Administration**

5.5.1 A&M System shall appoint a contract administrator (the "Contract Administrator") who will be A&M System's point of contact for this Agreement. All matters affecting the terms of this Agreement, or the administration thereof shall be referred to the Contract Administrator. The Contract Administrator shall be contacted for changes or amendments to this Agreement, including but not limited to changes in the scope of work, period of performance, cost, and report requirements. Only the Contract Administrator may notify Provider of any such approval by A&M System and Provider proceeds at its own risk if it fails to receive such notification from the Contract Administrator. The initial Contract Administrator shall be the Executive Director of Procurement and Business Services or designee. If in the future the Contract Administrator changes, A&M System will provide such change in Contract Administrator to Provider in writing.

5.5.2 The TAMHSC contact person for purposes of the day-to-day administration in regard to the operations and performance of the Provider will be the Chief of Staff for the Texas A&M School of Engineering Medicine or their designee. Failures to perform as expected will be reported to the Contract Administrator identified in paragraph 5.5.1.

### 6. **SCOPE OF FOOD SERVICES**

6.1 **Food Services Standards.** In providing the Services, Provider shall furnish high quality food services to the students, faculty, staff and guests of TAMHSC, adhering to selection and purchase of food items, menus, prices, portions, hours of operations, style of service, improvements, special events, and other pertinent elements, all in accordance with and as set forth with specificity in the Contract Documents.

6.2 **Hours of Operation.** Provider will provide and manage food operations within the Building during the mutually agreed upon hours of Monday through Friday, from 7:00 a.m. to 5:30 p.m. Provider will follow the holiday schedule for TAMHSC, or as established for the Building by TAMHSC.



**6.3 Commencement of Services.** Provider shall commence Services operations within ninety (90) days of the notice to proceed for construction of the Buildout by the Contractor, or as otherwise agreed to by both parties.

**6.4 Specialty Catering with Alcoholic Beverages.** Any catering services to be provided by Provider that intend to include the serving of alcoholic beverages will be addressed by a separate written agreement that addresses such catering services including alcoholic beverages.

## **7. GENERAL OPERATIONS**

### **7.1 Oversight**

Provider will monitor all aspects of the Services operations in order to ensure that all Services are provided in accordance with the Agreement.

### **7.2 Quality Assurance.**

**7.2.1. Customer Service.** Provider will develop, implement and update annually comprehensive plans regarding quality assurance. Provider will deliver its plans to TAMHSC for review, comment and approval prior to implementation. Such plans should include conducting a continuous and comprehensive customer satisfaction program whereby it will work with TAMHSC to establish agreed upon benchmarks for satisfaction, utilize tools and metrics to measure the satisfaction of the customers, including surveys and/or real time tracking mechanisms, and create and execute action plans, in consultation with A&M System to correct any deficiencies, including but not limited to quality and satisfaction. In addition, Provider shall work with TAMHSC to establish procedures to immediately address any complaints received as to the quality of services or products or provision of Services.

**7.2.2 Performance Measures.** Provider and TAMHSC shall work together to establish performance measures for Provider to meet during the Term of this Agreement which shall include staffing levels, hours of operation, customer service, food quality, food safety, financial reporting, and other performance related matters. Should Provider fail to meet these performance measures, A&M System and TAMHSC shall, in its sole discretion determine whether to collaborate on a plan to remediate the deficiencies or terminate for convenience.

### **7.3 Equipment**

For the duration of this Agreement, including the Initial Term and any renewal term, Provider will provide normal operator cleaning, maintenance, service and repair, as necessary for all equipment including the TAMHSC owned Equipment. Before the commencement of the Services, and on an annual basis thereafter, Provider and TAMHSC will conduct an equipment inventory and mutually agree upon an inventory confirmation document. Provider understands and agrees that the TAMHSC Equipment shall be used only in connection with the Services and for no other purpose, unless expressly authorized in writing by the A&M System Contract Administrator. Any other use of the TAMHSC Equipment is unauthorized and must be reported immediately to the A&M System Contract Administrator. At the expiration or termination of this Agreement, Provider shall return to TAMHSC all TAMHSC Equipment and any equipment purchased by TAMHSC during the term of this Agreement and relating to performance of the Services in the condition received, ordinary wear and tear excepted. Provider shall transfer

ownership and title to TAMHSC of all Food Services related equipment purchased by Provider and paid for by TAMHSC for the performance of the Services within thirty (days) from expiration of this Agreement.

#### 7.4 **Safety**

7.4.1 Provider shall provide an acceptable program of accident prevention and safety education and shall use its best efforts to protect the safety of Provider employees, and TAMHSC students, faculty, staff and guests. Ongoing proper instructions on the use of equipment and food handling techniques shall be provided in the promotion of a safe and accident-free environment. Provider shall immediately report fires, unsafe conditions, thefts, and security hazards to the Chief of Staff. Provider shall immediately fix and report to the Chief of Staff and Contract Administrator any citations or other notice of unsafe or unlawful conditions issued by TAMHSC or by any local, state or federal agencies.

7.4.2 TAMHSC shall furnish and maintain all fire extinguisher equipment and related fire suppression supplies and systems. Provider shall notify TAMHSC immediately after any fire extinguisher use or discharge.

#### 7.5 **Security**

General security is provided by TAMHSC and TAMHSC retains authority over all security matters. Nonetheless, Provider shall be responsible for maintaining the security of the Food Preparation and Service Areas to prevent theft, vandalism or other damages to those areas. Provider shall be responsible for the security of any keys or locking devices provided to Provider by TAMHSC. Provider shall be responsible for any loss or damage resulting from Provider' failure to provide adequate security. Security measures and required reporting implemented by Provider shall be consistent with TAMHSC then current policies, regulations, rules and procedures with respect to security.

7.6 **Pest Control.** Pest control services are provided by TAMHSC. Provider shall communicate all pest control issues within the Food Service preparation and serving areas and adjacent areas to the Chief of Staff.

#### 7.7 **Trash**

Provider shall place all trash, garbage and other refuse in the appropriate containers or compactors at such locations as may be approved by TAMHSC. Provider shall conduct its operations in connection with the Services in such a manner as to promote recycling of aluminum, plastics, paper and other recyclable goods in conformance with the TAMHSC sustainability plan. Spills around trash areas shall be cleaned when they occur. Storage of refuse and recycling should be in appropriate containers and in unobtrusive areas of the Facilities, not in the food production or storage areas.

#### 7.8 **Signage**

7.8.1 Provider may display its business signs, logos, and other promotional materials at locations within the Building, provided that such display materials shall comply with all applicable TAMHSC policies, regulations, rules and procedures and that such materials are approved by the Chief of Staff prior to display, in each case. The approved signage in Exhibit F and all signage

locations will be mutually agreed upon in written or graphical format, as appropriate, by TAMHSC and Provider.

7.8.2 All signage in other locations outside and/or around the Building on A&M System owned property must be approved by the Chief of Staff or their designee, in each case.

## **8. CAPITAL IMPROVEMENTS**

8.1 Prior to the commencement of any Capital Improvements, defined as improvements to A&M System buildings and facilities or any other maintenance, repairs or improvements in connection with the Services or the Food Preparation and Service Areas and deemed as Capital Improvements by A&M System, Provider shall prepare and submit to the Contract Administrator for review and approval a schedule of each such capitalized expenditure or improvement which Provider intends to perform. Each schedule of capitalized expenditures or improvements shall describe the general nature of the equipment, maintenance, repairs or improvements to be performed; an estimated budget for each such expenditure or project; schematic design and construction drawings; bid proposals; purchase orders; and other related documents. Upon completion, Provider shall provide A&M System with “as built” drawings, if applicable, and verification of payment.

8.2 Provider shall not incur any expense for any Capital Improvement without the prior written approval of the A&M System Contract Administrator, which approval may be granted or withheld at A&M System’s sole discretion. Provider shall promptly notify A&M System of any anticipated cost overruns exceeding the pre-approved budget for any Capital Improvement previously approved by A&M System.

8.3. With respect to any capital or other improvements to any building or structure within the A&M System campus, Provider shall also comply with A&M System’s [Uniform General Conditions](#) (UGC) and all other construction contracting requirements as A&M System may reasonably require. Provider shall be responsible for the management of all such construction activities, as approved by A&M System, and shall pay all costs associated therewith.

## **9. FINANCIAL ARRANGEMENTS**

### **9.1 Costs and Expenses**

Provider shall pay all costs and expenses for all goods, services, equipment, furnishings, fixtures, materials, supplies and other expenses incurred or otherwise necessary in connection with providing the Services, other than those costs and expenses specifically allocated to A&M System in the Contract Documents.

### **9.2 Commissions**

9.2.1 Commission Rate. Provider shall pay to TAMHSC a percentage commission (the “Commission”) of all net revenue derived in connection with this Agreement. Net revenue (the “Revenue”) shall be defined to include all revenue received by Provider or otherwise derived from any sales, services or other sources in connection with this Agreement (excluding sales taxes) including sales or other revenue received from any subcontractor, assignee,

concessionaire, licensee or other vendor operating under this Agreement, whether such sales be evidenced by check, cash, debit account, credit, charge account, exchange or otherwise, after all operating and other expenses are subtracted.

For the initial term of this Agreement, the Commission shall be calculated monthly at 6% of the net revenue. For any extension of this Agreement as allowed in Section 3, the Parties agree to negotiate in good faith a mutually agreed upon commission rate for the extended term.

9.2.2 Payment of Commission. Upon commencement of Services, Provider shall calculate and pay the negotiated Commissions monthly, on or before the tenth (10<sup>th</sup>) day of the month immediately following the last day of the previous month.

### 9.3 **Financial Reports**

9.3.1 On or before the fifteenth (15<sup>th</sup>) day immediately following the last day of the previous quarter during the Initial Term and each renewal term (collectively referred to as the "Term") of this Agreement, Provider shall deliver to TAMHSC a quarterly report of sales and commissions realized during the previous quarter.

9.3.2 The quarterly reports should cover the current quarter and year-to-date, and provide information regarding budgeted and actual sales and/or other income, commissions paid, commissions due, expenditures for capital improvements and assets, and such other information as A&M System may reasonably request. Causes and appropriate documentation of irregular revenue and expense deviations shall be noted by Provider as part of these statements.

9.3.3 Provider shall meet quarterly with the Chief of Staff to review the reports discuss problems and mutually agree on course of action to improve the results of the required services included in this Agreement.

### 9.4 **TAMHSC Catering Charges**

Provider shall submit special event invoices for catering and related charges promptly to TAMHSC. Invoices shall be accurate and properly documented. TAMHSC shall make payment to Provider within thirty days (30) days of receipt of a correct invoice, in accordance with Texas Prompt Pay laws.

### 9.5 **Non-TAMHSC Special Events.**

Billing and collections for special events, catering, or conferences not sponsored by TAMHSC shall be the sole responsibility of Provider and shall be reported as a separate operating unit on financial statements.

### 9.6 **Records, Audits, and Review**

9.6.1 Audits by the State Auditor's Office or A&M System. Provider understands that acceptance of funds and/or use of A&M System's Facilities and property under this 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 Section 51.9335(c), *Texas Education Code*. Provider agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Such records shall include, without limitation, all reports, records, financial information and other documents relating to the Services, including but not limited to financial statements, reports of capital investments, cash collection reports, route inventory cards, sales reports, and commission report. Provider will include this provision in all contracts with permitted subcontractors. In addition, Provider shall, upon reasonable notice, give A&M System or its authorized representative the opportunity at a reasonable time during normal business hours to inspect, examine, audit and copy such of Provider' business records which are directly relevant to the financial arrangements set forth this Agreement. The cost of such inspection, examination and audit will be at the sole expense of A&M System and such inspection, examination and audit shall be conducted at the Provider locations where said records are normally maintained.

9.6.2 Audits by Provider. Provider will provide A&M System with copies of all internal audits by Provider, or its agents, (if any) performed in connection with the Services or other business activities of Provider at A&M System and TAMHSC. Copies of such audits will be provided to A&M System no later than thirty (30) days after receipt by Provider.

9.6.3. Retention. All contracting records pertaining to work performed in accordance with this Agreement, including all subcontractor agreements shall be kept on file by Provider for a period of seven (7) years from the date the record is made.

## **10. INSURANCE AND INDEMNIFICATION**

10.1 **Indemnification**. Provider shall defend, indemnify and hold harmless A&M System and its respective officers, employees, governing board and agents from and against any and all claims, losses, causes of action, judgments, damages and expenses, including but not limited to reasonable attorneys' fees, resulting from any personal injury, sickness, disease, death or property damage, caused by or arising out of: (a) any breach or failure of performance by Provider under this Agreement; or (b) any negligent act, error, omission or willful misconduct of Provider, its officers, agents, employees, contractors, subcontractors or personnel in the performance of the Services or otherwise relating to this Agreement. This indemnification provision shall survive the termination of this Agreement.

### **10.2 Insurance**

10.2.1 Coverage. Provider shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis.

All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to the A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to Provider under this Agreement. Provider shall assess its own risks and if it

deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Provider is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to the A&M System at least ten (10) days before the effective date of the cancellation.

10.2.2 Policy Limits. Insurance must be carried to at least the following minimum amounts:

<u>Coverage</u>	<u>Limit</u>
<b>A. <u>Worker's Compensation</u></b>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit
<b>B. <u>Automobile Liability</u></b>	
Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;	
<b>C. <u>Commercial General Liability</u></b>	
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to utilized premises	\$300,000
Medical Payments	\$5,000

#### **Additional Endorsements**

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and the Texas A&M University System as additional insureds.

The required commercial general liability policy will be issued on a form that insures Provider's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Provider under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

**All insurance policies**, with the exception of worker's compensation, employer's liability, professional liability and cyber liability will be endorsed and name The Board of Regents for and

on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by Provider. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

**All insurance policies** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to the A&M System at least ten (10) days before the effective date of the cancellation.

**All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to the A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 10.

10.2.3 **Subrogation**. Provider shall waive its insurers' rights of subrogation against A&M System. All policies of insurance shall be endorsed to be primary and not contributing to other insurance maintained by A&M System, if any.

10.2.4 **Certificate of Insurance**. Provider will provide certificates indicating such insurance is in force and effect within 10 working days after full execution of this Agreement, and such certificates must state that A&M System will be notified in the event of cancellation of coverage. Failure to maintain insurance coverage as described above will be considered a default under this Agreement.

10.2.5 Provider acknowledges that, because A&M System is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of A&M System or for injuries caused by conditions of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of A&M System is provided by A&M System as mandated by the provisions of Chapter 502, *Texas Labor Code*. A&M System shall have the right, at its option, to (a) obtain liability insurance protecting A&M System and its employees and property insurance protecting A&M System's buildings and contents, to the extent authorized by Section 51.966, *Texas Education Code*, or other law, or (b) self-insure against any risk that may be incurred by A&M System as a result of its operations under this Agreement.

## **11. LICENSES, PERMITS AND TAXES**

11.1 Provider shall secure in its name and at its expense all federal, state, and local licenses and permits required for provision of the Services. Provider's alcoholic beverage licensure for serving alcoholic beverages in approved A&M System locations pursuant to A&M System policy shall be required and included in a separate written Alcohol Concession Agreement. Provider shall also pay all taxes which may be levied in connection with the performance of the Services and other operations under this Agreement, including taxes levied or incurred against Provider's inventory, personal property, fixtures, sales, licenses, income, and any other such taxes.

## **12. PARKING**

12.1 Provider, its agents and employees shall abide by all TAMHSC parking policies and regulations. Provider shall pay A&M System for all parking permits, Building parking lot reserved parking spaces (a limited number), or other parking fees for vehicles parked on A&M System's campus by Provider or its employees. Provider's employees may also individually purchase parking permits. Unpaid parking fines incurred by Provider employees shall be paid by Provider.

## **13. CONFIDENTIALITY**

13.1 In the course of providing Services hereunder, the Parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other Party which includes, but is not limited to, menus, recipes, signage, food service surveys and studies, management guidelines, procedures, operating manuals and software, all of which shall be identified as confidential ("Confidential Information"). The Parties agree to hold in confidence and not to disclose any Confidential Information during the Term of this Agreement and for one (1) year afterward other than Confidential Information subject to longer confidentiality agreements. The Parties may use or disclose Confidential Information:

- (a) to its employees and affiliates or others to the extent necessary to render any service hereunder, provided that the other Party is first notified of the information that will be provided to any party outside of this Agreement and provided further that such information is disclosed only after such party is required to maintain it in confidence as required hereunder;
- (b) to the extent expressly authorized by either Party;
- (c) to the extent that at the time of disclosure, such Confidential Information is in the public domain, or after disclosure, enters the public domain other than by breach of the terms of this Agreement;
- (d) that is in the possession of either Party at the time of disclosure and is not acquired directly or indirectly from the other Party;
- (e) that is subsequently received on a non-confidential basis from a third party having a right to provide such information;
- (f) as required by Texas law;
- (g) order of a court or administrative body with jurisdiction; or
- (h) as required by an order during the course of a judicial or regulatory proceeding or as required by a government authority.

13.2 The Parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other Party. Each Party's Confidential Information shall remain the exclusive property of the Party and shall be returned to the other Party upon termination or expiration of this Agreement. In the event of any breach of this provision, the Parties shall be entitled to equitable relief, in addition to all other remedies otherwise available to it at law. This provision shall survive the termination or expiration of this Agreement.



13.3 Texas Public Information Act Requirements. Provider acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon A&M System's written request, Provider will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to A&M System in a non-proprietary format acceptable to A&M System. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which A&M System has a right of access. Provider acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this agreement and Provider agrees that the agreement can be terminated if Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

#### **14. RELATIONSHIP OF THE PARTIES**

14.1 Independent Contractors. In performing the Services and other responsibilities required under this Agreement, Provider shall be acting as an independent contractor and not as an employee, agent, partner, or joint venture of A&M System. Neither A&M System nor Provider shall have any authority to act for or on behalf of the other Party, or to incur any debts or other obligations on behalf of the of the Party, or to incur any debts or other obligations on behalf of the other, except as expressly provided for herein. Neither party shall use the name or any trademark of the other in any advertising, marketing, letterhead, sales promotion, publicity or for any other purpose without, in each instance, the prior written approval of the other.

14.2 Relationship to Third Parties. Nothing contained in the Contract Documents shall create any professional obligation or contractual relationship between A&M System and any third party, including without limitation, any consultant, contractor, subcontractor or supplier of Provider. Notwithstanding the foregoing, it is understood and agreed that A&M System is intended as a third party beneficiary of all contracts relating to the Services, all purchase orders, and other agreements between Provider and any third party in connection with the Services. Provider shall also be responsible to A&M System for the acts and omissions of its subcontractors, suppliers, agents and employees or those in privity with Provider, at any tier.

#### **15. PROPRIETARY MARKS.**

15.1. TAMHSC acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to Provider or its affiliated and parent companies (collectively "Provider Marks") are proprietary marks of Provider. TAMHSC will not use Provider Marks for any purpose except as expressly permitted in writing by Provider. Upon termination of this Agreement, TAMHSC shall discontinue the use and display of any Provider Marks and shall allow Provider to remove all goods bearing any Provider Marks.

15.2 Provider acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to TAMHSC (collectively "TAMHSC Marks") are proprietary marks of TAMHSC. Provider will not use TAMHSC Marks for any purpose except as expressly permitted in writing by TAMHSC in each case. Upon termination of this Agreement, Provider shall discontinue the use and display of any TAMHSC Marks and shall allow TAMHSC to remove all goods bearing any TAMHSC Marks.

## **16. INFORMATION TECHNOLOGY SYSTEMS**

In connection with the services being provided hereunder, Provider may need to operate certain information technology systems not owned by TAMHSC ("Non-TAMHSC IT Systems"), which may need to interface with or connect to TAMHSC networks or information technology systems ("TAMHSC IT Systems").

16.1 Provider shall be responsible for all Non-TAMHSC IT Systems, and TAMHSC shall be solely responsible for TAMHSC IT Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If Provider serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Provider will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data ("Data Protection Rules"). If Non-TAMHSC IT Systems interface with or connect to TAMHSC IT Systems, then TAMHSC agrees to implement forthwith upon request from Provider, at its own expense, the changes to TAMHSC IT Systems that Provider reasonably requests and believes are necessary or prudent to ensure Provider' compliance with the Data Protection Rules.

16.2 Provider shall exercise reasonable efforts to ensure use of TAMHSC IT Systems is generally consistent with TAMHSC historic levels of TAMHSC IT Systems usage for similar facilities. TAMHSC or a third-party provider may also separately meter TAMHSC IT Systems usage for the Food Preparation and Service Areas to monitor TAMHSC IT Systems consumption by Provider and may assess fees in the following nonexclusive list of circumstances:

- a. If TAMHSC determines that Provider is using higher TAMHSC IT Systems consumption than is generally consistent with TAMHSC historic levels of use for similar facilities, then TAMHSC may assess fees to Provider.
- b. TAMHSC may contract with third party providers who may assess fees to Provider for use and access of internet technology systems for the Food Preparation and Service Areas.

16.3 TAMHSC will promptly provide Provider with written notice of any change to its policies pertaining to TAMHSC IT Systems, or change in configuration of TAMHSC IT Systems, in order that Provider may assess the impact of such change upon the security of Non-TAMHSC Systems.

## **17. HUB SUBCONTRACTING PLAN**

17.1 It is the policy of the State of Texas, A&M System and Texas A&M Health to encourage the use of Historically Underutilized Business (HUBs) in our prime contracts, subcontractors, and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing.

17.2 If a subcontractor will be used to provide any commodity or service as part of the scope of this Agreement, the PROVIDER will be required to make a good faith effort and to complete the state of Texas HUB Subcontracting Plan (HSP) form found at [https://assets.system.tamus.edu/files/budgets-acct/pdf/hub\\_reports/HSP\\_FY23.pdf](https://assets.system.tamus.edu/files/budgets-acct/pdf/hub_reports/HSP_FY23.pdf). If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER is required to document these companies as subcontractors on the HSP form and provide an explanation as to why solicitations were not done, e.g., contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be required to make a good faith effort according to the instructions withing the HSP form.

17.3 In the event that the PROVIDER determines they will be using a subcontractor, please contact Ms. Porschia Tolbert from the A&M System's HUB Program at (979) 458-3265 or [so-hubprogram@tamus.edu](mailto:so-hubprogram@tamus.edu) for assistance in determining available HUB subcontractors and proper completion of the HSP form.

## 18. TERMINATION

18.1 **Termination.** This Agreement may be terminated before the expiration of the Initial Term or any subsequent term upon the occurrence of any of the following:

- a. **Termination for Cause.** In the event of Substantial Failure by either Party to perform in accordance with the terms of this Agreement, the other Party may terminate this Agreement upon thirty (30) days written notice of termination setting forth the nature of the failure, provided that the failure is through no fault of the other Party and is not due to Force Majeure conditions. The termination shall not be effective if (i) the other Party fully cures the failure prior to the end of the thirty (30) day period following receipt of written notice, or (ii) such failure is of a nature that it cannot be cured within thirty (30) days, and the Party in default shall have promptly commenced curing such default within such thirty (30) day period and shall thereafter proceed to cure such default with reasonable diligence in good faith without interruption except for causes reasonably beyond its control . A&M System and Provider agree that "Substantial Failure" shall mean material non-compliance with the requirements of this Agreement which:
  1. Is material and continues over a protracted period of time;
  2. Is repeated at least three (3) times in a twelve (12) month period or is systematic and is not corrected or adequately responded to once identified;

3. Results in material non-compliance with applicable laws or regulations resulting in substantial harm to A&M System;
  4. Materially interferes with or impedes the other Party's ability to perform its responsibilities under this Agreement; or
  5. Materially deprives the other Party of the benefits it reasonably anticipated under this Agreement.
- b. **Termination for Convenience.** Each Party may, at its sole discretion and without cause and at its convenience, terminate this Agreement at any time upon giving thirty (30) days advance notice to the other Party. Upon request of a Party, both Parties agree to meet prior to such termination for convenience. Upon termination pursuant to this Section 18.1.b, the A&M System shall compensate Provider for services satisfactorily performed from the time of the last payment date to the termination date in accordance with then applicable rates under this Agreement, and Provider shall pay to the A&M System commissions due through the date of termination, with any annual commission guarantee calculated on a pro rata basis, when applicable. Except as otherwise specifically provided for herein, neither Party shall be required to reimburse or pay the other Party for any services performed or expenses or liabilities incurred after the effective date of termination.

**18.2 Termination Transition.** Upon the termination or expiration of this Agreement for any reason, Provider shall, as soon thereafter as is feasible, but in no event later than thirty (30) days after the effective date of termination or expiration of this Agreement, vacate all parts of the Building occupied by Provider, remove its non-food services related equipment and property, its food services related equipment and property purchased by and owned by Provider, and return the Facilities to A&M System, together with all the equipment furnished by A&M System or food service related property and equipment purchased by Provider and paid for and owned by A&M System for Provider's performance under this Agreement, in the same condition as when originally made available to Provider or purchased by Provider, excepting reasonable wear and tear, fire and other casualty loss. If requested in writing by A&M System, Provider shall assign to A&M System all outstanding Provider contracts and subcontracts regarding the food service operations at RELLIS.

**18.3 Cooperation.** The termination or expiration of this Agreement shall not affect the rights, privileges, liabilities and/or responsibilities of the Parties as they exist as of the effective date of termination. The Parties shall cooperate fully with each other during the Term of the Agreement and subsequent thereto in order to ascertain and satisfy the liabilities of either Party to the other.

**18.4 Consumables Inventory Disposition.** At the termination of this Agreement, if requested by Provider and agreed to by A&M System, A&M System may either purchase directly or cause Provider's successor to purchase Provider's usable inventory of food and supplies, it being further agreed that if Provider maintains an inventory of supplies bearing the logo of A&M System or a sponsor, A&M System shall have the option to either purchase directly or cause Provider's

successor to purchase Provider's usable inventory of such logoed supplies. The purchase price for such food and/or supplies shall be no more than at the cost paid by Provider.

**18.5 Provider Employees.** In the event of termination or expiration of this Agreement, A&M System may offer employment to certain Provider employees engaged in providing the Services, and Provider shall assist A&M System in the transfer of any such employees electing to accept employment with A&M System, and/or any successor contractor selected by A&M System.

## **19. MISCELLANEOUS**

**19.1 Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

**19.2 Assignment.** Neither Provider nor A&M System may assign or transfer this Agreement, or any part thereof, without the written consent of the other Party, except the Parties may assign this Agreement to an affiliated entity or wholly owned subsidiary without prior approval and without being released from any of their responsibilities hereunder.

**19.3 Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both parties. In the event of a conflict between the terms of this Agreement and any other documents constituting part of this Agreement, the terms of this Agreement shall control.

**19.4 Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.

**19.5 Conflict of Interest.** Provider certifies, to the best of their knowledge and belief, that no member of the A&M System’s Board of Regents, nor any employee of A&M System or A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by A&M System, has a direct or indirect financial interest in Provider or in the transaction that is the subject of the Agreement.

**19.6 Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, Provider certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**19.7 Certification Regarding Business with Certain Countries and Organizations.** Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. Provider acknowledges this Agreement may be terminated immediately if this certification is inaccurate.

**19.8 Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. A&M System and Provider can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

Contract Administrator:      The Texas A&M University System  
301 Tarrow St., Suite 270  
College Station, Texas 77840  
Attention: Executive Director  
Phone: (979) 458-6410  
E-mail: [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu)

Chief of Staff:                      TAMHSC  
MS 3477 TAMU  
College Station, Texas 77843  
Attention: Chief of Staff

Provider:                              Last Shot Xpresso, LLC  
609 North Parker Ave.  
Bryan, Texas 77803  
Attention: Floyd Raven Sr.  
Phone: (504) 957-7588  
E-mail: [Management@LastShotXpresso.com](mailto:Management@LastShotXpresso.com)

19.9 **Governing Law and Venue.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, nonperformance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

19.10 **Venue.** Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against A&M System is to be in the county in which the principal office of A&M System's governing officer is located.

19.11 **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, Provider certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

19.12 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Provider agrees that any payments owing to Provider under this Agreement may be applied directly toward certain debts or delinquencies that Provider owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

19.13 **Franchise Tax Certification.** If Provider is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Provider certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Provider is exempt from the payment of franchise (margin) taxes.

19.14 **Prohibited Bids and Agreements.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

19.15 **Products and Materials Produced in Texas.** Provider agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, Provider will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

19.16 **Loss of Funding.** Performance by A&M System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M System will issue written notice to Provider and A&M System may terminate this Agreement without further duty or

obligation hereunder. Provider acknowledges that appropriation of funds is beyond the control of A&M System. In the event of a termination or cancellation under this Section, A&M System will not be liable to Provider for any damages that are caused or associated with such termination or cancellation.

**19.17 Non-Waiver.** A&M System is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. Provider expressly acknowledges that A&M System is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of A&M System.

**19.18 Dispute Resolution.** The dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and Provider to attempt to resolve any claim for breach of contract made by Provider that cannot be resolved in the ordinary course of business. Provider shall submit written notice of a claim of breach of contract under this Chapter to the Deputy Chancellor and Chief Financial Officer of A&M System, who shall examine Provider's claim and any counterclaim and negotiate with Provider in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M System's sovereign immunity to suit or liability, and A&M System has not waived its right to seek redress in the courts.

**19.19 Standard of Care.** All Services performed under this Agreement shall be performed in a professional manner using that degree of care and skill ordinarily exercised by and consistent with the standards of competent professionals providing similar services.

**19.20 Authority to Contract.** Each Party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.

**19.21 Divisions and Heading.** The divisions of this Agreement into articles, sections and subsections and the use of captions and headings are solely for convenience and shall have no legal effect whatsoever in construing the provisions of the Agreement.

**19.22 Limitations.** The Parties are aware that there are constitutional and statutory limitations on the authority of A&M System (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on A&M System's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on A&M System except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by A&M System nor any other conduct, action, or inaction of any



representative of A&M System relating to this Agreement constitutes or is intended to constitute a waiver of A&M System's or the state's sovereign immunity to suit.

**19.23 Compliance with Laws.** PROVIDER shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement. Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

**19.24 Prohibition On Contracts Related To Persons Involved In Human Trafficking.** Under Section 2155.0061, *Government Code*, Provider certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**19.25 Energy Company Boycotts.** Provider represents and warrants that: (1) it does not, and will not for the duration of the Agreement, boycott energy companies or (2) the verification required by Section 2274.002 of the *Texas Government Code* does not apply to the Agreement. If circumstances relevant to this provision change during the course of the Agreement, Respondent shall promptly notify A&M System.

**19.26 Firearm Entities and Trade Association Discrimination.** Provider verifies that: (1) it does not, and will not for the duration of the Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the *Texas Government Code* does not apply to the Agreement. If circumstances relevant to this provision change during the course of the Agreement, HOTEL shall promptly notify A&M System.

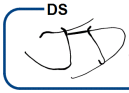
**19.27 Not Eligible for Rehire.** Provider is responsible for ensuring that its employees involved in any work being performed for A&M System under this agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, Discipline and Dismissal of Employees, Section 4 ("NEFR Employee"). In the event A&M System becomes aware that Provider has a NEFR Employee involved in any work being performed under this Agreement, A&M System will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of the resultant is agreement by A&M System.

**19.28 Ethics.** The Parties shall implement programs, policies and procedures necessary to promote compliance with their respective Codes of Ethics or ethics policies, regulations, rules or procedures. The Parties shall also provide each other copies of their internal Codes of Ethics within thirty (30) days of the final execution of this Agreement. Further, the Parties shall provide each other copies of any revisions to such codes, policies, regulations and rules within thirty (30)

days of the effective date of the revision. In the event of a breach by a Party's employees of the requirements of its respective Code of Ethics or ethics policies, regulations, rules or procedures relating specifically to Texas A&M, such Party will notify the other Party of such breach within five (5) days of discovery thereof.

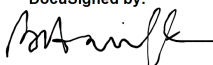
19.29 **Multiple Counterparts.** This Agreement may be executed by each of the parties in separate counterparts; each counterpart when so executed shall be deemed an original. When executed by all parties, such counterparts shall, together, constitute and be one and the same Agreement.

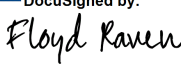
IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.



The Texas A&M University System

Last Shot Xpresso, LLC

DocuSigned by:  
By:   
BEDCDB89EA70479...

DocuSigned by:  
By:   
A06E326E9DBF425...

Billy Hamilton  
Deputy Chancellor and CFO

Floyd Raven  
Chief Executive Officer

Date: 6/5/2023

Date: 6/5/2023

**EXHIBIT A – SCOPE OF SERVICES**

The initial scope of menu items and products offered for sale shall at a minimum include but is not limited to the products below.

**Initial Beverage Service:**

Coffee (Hot/Cold) – Latte, Cappuccino, Frappe, Hot Chocolate, Specialty Beverages  
Tea – Black Tea, Green Tea, Passion Fruit Tea  
Smoothies – Fruit, Other Varieties  
Carbonated Beverages – Game Boosters  
Refreshers-lemonade based, energy drink beverages

**Initial Food & Snack Service:**

Brunch items – waffles, grits, shrimp, etc.  
Sandwiches – Breakfast Sandwiches, Lunch Sandwiches  
Salad – Mixed Salad Varieties  
Sliced Cakes, Cake Pops  
Cookies – Assorted Variety  
Fruit Cup – single fruit, mixed fruit, fruit salad  
Pastries – Scones, Biscotti, Croissants, Brownies, Macarons, Pralines

**Last Shot Xpresso Merchandise:**

Last Shot Xpresso Merchandise (as examples; tumblers, cups, hats, shirts, stickers, reusable stainless straws, 12oz coffee bag, 4oz coffee bag)

**PepsiCo Products: As applicable**

If PepsiCo beverages will be provided by the Provider, PepsiCo beverage distribution pricing shall be established prior to distribution.

**Other Requirements and Expectations:**

Provider will submit its pricing schedule and any established sales goals to the Chief of Staff for review and approval. Additionally, Provider will participate in quarterly review meetings with the Chief of Staff allowing for mutually agreed upon changes to enhance service, including but not limited to, adding or removing products based on sales metrics to ensure customer satisfaction. Agreed changes to pricing and menu offerings will be implemented by the end of the first full week following the quarterly review meeting.

**EXHIBIT B – BUILDING; FOOD PREPARATION AND SERVICE AREAS**

The Food Service preparation and serving areas are designated on the floor plan attached.

**EXHIBIT C – EQUIPMENT**

The Equipment provided by Provider and A&M System (if any) for the Services pursuant to this Agreement include but are not limited to:

**Provider:** Last Shot Xpresso shall provide the following equipment.

- S60 LA CIMBALI 4
- SIDE SPRAY RINSER-24 X 7
- WC-G4 TWIN BREWER-1.5 GAL 3
- WC-1.5 GALLON SERVER 2
- MAHLKONIG GRINDER WHITE 3
- GEVA NITRO SYSTEM 2
- LCRO-500 WATER SYSTEM 2
- FRIIA HCS 1120V 4
- VITAMIX TOUCH & GO BLENDER 1
- VITAMIX 48OZ CONTAINER 2
- FROTHERING PITCHER 15OZ BLACK 6

**A&M System**

The A&M System is not providing any equipment as part of this Agreement.

**EXHIBIT D – BRANDED FOOD AND BEVERAGE**

There are no branded food or beverage products planned for sale or distribution as part of this Agreement. Any additions of other branded products in the future must be approved and agreed upon by both parties in writing. Refer to section 4.8 and 4.9 of this Agreement.

**EXHIBIT E – PERMITTED PRODUCTS**

Products listed below are permitted and included within the Scope of Services defined in Exhibit A. Any proposed changes to this list shall be made according to section 4.9 of this Agreement.

- A. Last Shot Xpresso brewed beverages – hot/cold
- B. Last Shot Xpresso food products
- C. Last Shot Xpresso smoothies
- D. Last Shot Refreshers, where applicable.

**EXHIBIT F – APPROVED SIGNAGE**

Diagrams or artwork of proposed signage to be submitted to TAMHSC prior to beginning operations for review and approval.



**EXHIBIT G – BUILDOUT SCOPE - ALBANY STUDIO**

See attached Interior Build-out scope from Albany Studio which includes description and costs.