


Purchase Change Request		 Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100			Order # MU20DINING
FY 2020	Buyer TBD	Date 5/13/2020	Account	P.O. Date 3/1/2019	Contract MU20DINING
Document <input type="checkbox"/> Requisition (Cancellation only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input type="checkbox"/> Open End Contract Purchase <input checked="" type="checkbox"/> Agreement		Document Action <input type="checkbox"/> Cancellation <input type="checkbox"/> Increase/Decrease <input type="checkbox"/> Unused Balance <input type="checkbox"/> Freight <input type="checkbox"/> Renewal <input type="checkbox"/> Extension Error <input type="checkbox"/> Error in Total Amount <input type="checkbox"/> Change of Account <input type="checkbox"/> Change of Vendor Name/Address <input checked="" type="checkbox"/> Other			
Vendor Name, Address, Phone #, etc. Sodexo America LLC 9801 Washingtonian Blvd Gaithersburg, MD 20878			Vendor Code 522208632	BOG Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100	
Ph#	Fax	FEIN# 52-2208632			
Item#	Quantity	Description of Change	Unit Price	Extended Price	
		Change Order # 4 To add pages 40-42 to the contract, all in accordance with the same terms and conditions contained in the original contract and authorized change orders, effective August 19, 2019. FOOD SERVICE			
Reason for Change: To add missing pages 40-42			Previous Total	\$ OPEN-END	
			Increase	\$ _____	
			Decrease	\$ _____	
			New Total	\$ OPEN-END	

Approved: Angela White Negley 5/13/20
 Authorized Signature Date

N/A
 Attorney General if required Date

Contract Purchase Order	Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25765-4100 Direct all inquiries regarding this order to: (304) 696-3157	Contract # MU20DINING				
TO: SODEXO AMERICA LLC 1 JOHN MARSHALL DRIVE HUNTINGTON WV 25755 PH: 301-981-4000 FEIN: 52-2208632		Ship to: N/A Bldg: Room #:				
THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN						
WVFIMS Account #:						
P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #
3/1/2019	2020	TBD				
<u>AGREEMENT</u>						
This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and SODEXO AMERICA, LLC for Food Services. Services shall begin August 16, 2019 and extend through August 15, 2020, all in accordance with the agreement attached hereto and made a part hereof. Approved as to sufficiency of form and manner of execution this <u>14th</u> day of <u>August</u> , 20 <u>19</u> . <u>Patrick Morrison</u> Attorney General of the State of West Virginia By: <u>[Signature]</u> Chief Counsel THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER						
Line No.	Fund	Org.	Account	Encumber Amount		
1.	Various	Various	Various	OPEN-END	Total:	OPEN-END
2.						
3.						
4.						
Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4500				<u>Angela White Negley</u> <small>Angela White Negley (Aug 23, 2019)</small>	Aug 23, 2019 Date	
				Authorized Signature		

BOG35

AGREEMENT FOR PROVIDING FOOD SERVICES BETWEEN MARSHALL UNIVERSITY ON BEHALF OF THE
BOARD OF GOVERNORS AND SODEXO AMERICA, LLC

This AGREEMENT ("Agreement") FOR PROVIDING FOOD SERVICES is made between MARSHALL UNIVERSITY ON BEHALF OF THE BOARD OF GOVERNORS ("University" or "MU"), and SODEXO AMERICA, LLC, a Delaware limited liability company ("Vendor" or "Proposer").

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

1. Description of Services. Vendor hereby agrees to provide exclusive Food Service Operations on the University's campuses located in Huntington, West Virginia, Services or Food Services, defined as the preparation, service and sale of food, beverages, goods, merchandise and other items at the Premises, specific to the resident dining program, retail program, Catering and concessions, excluding vending, sponsorship agreements and bookstores, and to comply with all Specifications, which may be included in the Proposal Documents. Vendor acknowledges that University has entered into a sponsorship agreement with Pepsi. University shall provide Vendor a copy of any such sponsorship agreement so that Vendor can comply. The University shall use reasonable efforts to direct applicable requests of such Services to Vendor under this Agreement.
 - 1.1. Previous Agreement. University and Vendor previously entered into an agreement effective August 16, 2009, and subsequent amendment (collectively, the "Previous Agreement"), concerning the scope of Food Service Operations to be provided by Vendor as set forth in Section 1 above. This Agreement supersedes the Previous Agreement and any and all other previous agreements relating to the subject matter as specified in Section 1 above. Notwithstanding the foregoing, any invoiced and unpaid amounts due to Vendor under the Previous Agreement shall remain due and payable.
2. Term. The effective date of this Agreement will be the fully executed signature date. The initial term of this Agreement will begin on August 16, 2019, ("Commencement Date") and end on August 15, 2020. At the end of the initial term, this Agreement will be evaluated. If the parties agree that it is a mutually beneficial relationship, the Agreement may be extended in writing for up to nine (9) additional one (1) year periods. Time is of the essence in this Agreement. University and Vendor agree to participate in Expectations Sessions, in accordance with Exhibit E, throughout the term of this Agreement with a minimum of one (1) per contract year.
3. Performance Standard. Vendor agrees to perform the Services described in this Agreement to the satisfaction of the University and with the accepted industry standard of care and skill for regularly rendering Services of the type required by this Agreement, and in conformance with all applicable federal, state, local and University laws, regulations, ordinances and licenses.
4. Warranties and Representations of Vendor. Vendor acknowledges that the University is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which the University would not have entered into this Agreement.

- 4.1. General Services Warranty. Vendor warrants that all Services provided shall conform to the accepted industry standard of care and skill for this type of Service.
- 4.2. Qualifications. Vendor warrants that it, as well as its employees, agents and subcontractors engaged to provide items or Services under this Agreement (collectively "Vendor Personnel"), has and will maintain all the skills, experience, and qualifications necessary to provide the Services contemplated by this Agreement, including any required training, registration, certification or licensure.
- 4.3. Conflict of Interest. Vendor warrants that to the best of Vendor's knowledge, there exists no actual or potential conflict between Vendor and the University, and its Services under this Agreement, and in the event of change in either Vendor's private interests or Services under this Agreement, Vendor will inform the University regarding possible conflict of interest which may arise as a result of the change. Vendor also affirms that, to the best of Vendor's knowledge, there exists no actual or potential conflict between a University employee and Vendor.
- 4.4. Nondiscrimination. Vendor warrants that Vendor is an equal opportunity employer during the performance of this Agreement.
- 4.5. Good Standing. Vendor warrants that Vendor is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of West Virginia.
- 4.6. Non-infringement. Vendor warrants that the Vendor's Services and/or the University's use of products, processes, techniques and methodologies provided by Vendor or developed by Vendor shall not infringe upon the copyright, patent or other proprietary rights of others.
- 4.7. Not Excluded. Vendor warrants that neither Vendor, nor, to the best of Vendor's knowledge, Vendor Personnel, is currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance, "Debarment and Suspension." Vendor shall immediately notify the University if it becomes debarred or suspended during the term of this Agreement. Vendor further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Vendor or its affiliates, or to the best of its knowledge, against any Vendor Personnel. Vendor agrees that it shall not perform any act that shall cause Vendor to be excluded from a federal health care program or debarred, suspended or listed in the GSA's List of Parties Excluded from Federal Procurement or Non-procurement Programs during the term of this Agreement.
- 4.8. Financial Arrangement. The detailed financial arrangement is herein enclosed.
- 4.9. Termination.
 - 4.9.1. Termination for Breach. If either party breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within ten (10) days in the case of failure to make payment when due or thirty (30) days in the case of any other Cause, the notice shall be null and void. If such Cause is not remedied within the specific period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights of termination referred

to in the Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

- 4.9.2. Immediate Termination. The University shall have the right to terminate this Agreement immediately upon notice to Vendor should any of the following situations occur:
- 4.9.2.1. Vendor or Vendor Personnel do anything to harm the business reputation of the University;
 - 4.9.2.2. Vendor or any Vendor Personnel is excluded from a federal health care program;
 - 4.9.2.3. If any warranty or representation of the Vendor in this Agreement is or becomes false or untrue;
 - 4.9.2.4. A person's health or safety is or may be in imminent and serious danger due to the actions or inaction of Vendor or Vendor Personnel;
 - 4.9.2.5. There may be imminent and serious harm to the environment or the University property from Vendor's acts or inactions or those of Vendor Personnel;
 - 4.9.2.6. The University reasonably determines Vendor has violated a law in providing the Services.
- 4.9.3. Effect of Termination. Vendor has sixty (60) days from the effective date of termination to submit final invoices for final satisfactory Services under this Agreement. University will have no obligation to assist in billing issues or issue payment under the terms of this Agreement for invoices submitted after the sixty (60) day period.
- 4.9.4. Without Cause Termination. Either party may terminate this Agreement, in whole or in part, at any time, without Cause, upon no less than thirty (30) days' prior written notice to the other party.
- 4.10. Change in Law. If, subsequent to the execution of this Agreement, it is determined by either party's legal counsel that this Agreement or any of its provisions may violate or does violate any law, rule, or regulation, the parties agree to renegotiate the provision(s) so that it (they), as well as this entire Agreement, complies with the law, rule or regulation. If the parties are unable to come to an agreement within thirty (30) calendar days, either party may, without further notice, immediately terminate this Agreement.
- 4.11. Compliance with Laws, Policies & Procedures. To the extent applicable to the Services, Vendor shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University's Ordinances. Vendor shall be solely responsible for insuring that any recommendations made in connection with the Services comply with all applicable federal, state, local and University laws, rules, regulations, policies and procedures. Vendor shall be responsible to obtain and maintain any necessary liquor licenses and permits for the Joan C. Edwards Stadium and for catering in the Student Center. Vendor shall have the exclusive right to sell and serve alcoholic beverages at the following locations:

Joan C. Edwards Stadium: One John Marshall Drive, Huntington, West Virginia 25755

Student Center: 1W27 Memorial Student Center, One John Marshall Drive,
Huntington, West Virginia 25755

- 4.11.1 University shall provide, at its expense, a dedicated network segment with available network jacks necessary to support all applicable Food Services that utilize point-of-sale ("POS") technologies, including but not limited to, POS equipment, kiosks, and unattended self-checkout terminals. University shall provide Vendor with access to all University owned POS systems necessary for Vendor to process consumer transactions. In addition, University shall provide Vendor with a suitable environment to include such heat, air conditioning, and utility service as may be reasonably required for the operation of Vendor's POS equipment. Vendor will obtain, store, utilize, process and transmit data processed through Vendor POS Equipment in accordance with all applicable laws and current Payment Card Industry Data Security Standards ("PCI Standards"). Vendor will implement, where technologically feasible, currently available Point-to-Point Encryption (P2PE) technologies. University agrees to allow Vendor and its internal auditors to access the University's information technology network and technical resources to the extent required to comply with applicable PCI Standards and to validate such compliance in accordance with the guidelines set forth by Vendor's acquiring bank.
- 4.11.2 Vendor shall be responsible for paying any incurred fees or charges for services including, but not limited to, network ports, jacks, telephone services, broadband internet services, and video services. University shall invoice Vendor in accordance with the University IT rate schedule in effect at the time the services are provided.
- 4.12. Insurance Coverage and Levels. Unless more specific insurance provisions are attached, Vendor shall, at Vendor's expense, obtain and maintain the following coverage:
- 4.12.1. Commercial general liability insurance including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).
- 4.12.2. Worker's Compensation at statutory limits in accordance with the appropriate State of West Virginia jurisdiction including Employer's liability (with minimum \$500,000).
- 4.12.3. Automobile liability for owned, non-owned and hired vehicles, used by the Vendor in provision of the Services, minimum limit (\$1 million each accident).
- 4.12.4. Vendor agrees to have Marshall University, on behalf of the Board of Governors, added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and incidents arising out of Agreement.
- 4.12.5. Vendor agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
- 4.12.6. If any of the required insurance is on a "claims made" basis and is cancelled during the term of this agreement, Vendor agrees to purchase full coverage or

prior acts coverage so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.

- 4.12.7. Vendor shall provide the University with a certificate of the above insurance coverage and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Vendor of its liabilities and obligations under this Agreement.
- 4.12.8. University shall maintain, or cause to be maintained, a system of coverage (either through purchased insurance, self-insurance, or a combination thereof) to keep the buildings, including the Premises, and all property contained therein insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance, to the extent permitted by law
5. Indemnity. The Proposer agrees to indemnify, defend and hold harmless, Marshall University and its Board of Governors, officers and employees from and against: (1) Any third party claims or losses arising in the course of services rendered by Proposer or any of Proposer's subcontractors, persons or firms performing or supplying services, materials or supplies in connection with the performance of the contract; (2) Any third party claims or losses resulting to any person or entity injured or damaged by the Proposer, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (3) Any failure of the Proposer, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws. Notwithstanding the foregoing, Proposer shall have no obligation to indemnify, or defend, or hold harmless Marshall University for supplies or services provided by subcontractors, persons or firms who are not Proposer Approved Vendors, nor shall Proposer have any obligation to indemnify, defend or hold harmless Marshall University for claims or losses arising from the actions or omissions of the officers or employees of Marshall University. Marshall University shall remain responsible for claims arising from the actions and omissions of its officers and employees.

Subject to Proposer's aforementioned indemnification obligation, and to the extent Proposer agrees to defend and indemnify Marshall University without reservation, Proposer will select counsel, control defense and settlement negotiations of any such claim. Should Proposer agree to a defense or defense and indemnity of Marshall University with reservation, Marshall University may select counsel to defend and represent their interests with expectation of Proposer's reimbursement of all reasonable costs and fees proportionate to Proposer's negligence or fault as determined by a court of competent jurisdiction. In the event that Marshall University, its officers or employees are found to be negligent and its negligence contributed to or caused the claim or loss, Marshall University shall promptly reimburse Proposer proportionately for costs, expenses and payments made pursuant to the aforementioned indemnification.

6. Reporting. A "Monthly Client Report" consisting of the monthly operating statement, itemized commission/revenue and operating statistics by location will be forwarded to Marshall the 20th day following the last day of each Accounting Period. Cash Register tapes must be accessible.

7. Audit. The Vendor is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The Vendor agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The Vendor shall make available to the University or its agents all such records and documents for audit on the Vendor's Premises during regular and reasonable working hours within ten (10) business days of a written request for availability.
- 7.1. The right to audit pertinent financial records shall include periodic examinations of such financial records throughout the term of the Agreement and for a period of five (5) years after its termination. The right to audit pertinent financial records shall also apply to food subcontractors hired by the Vendor for the purpose of fulfilling the Agreement. In the event that audits discover - findings of fraud or misrepresentation, the University may recoup the costs of the audit work from the Vendor. If the result of any audit establishes that Vendor has overpaid University, then such overpayment shall first be credited against payments currently payable to University, any excess shall be promptly repaid to Sodexo. If the audit reveals an underpayment to University, then Vendor shall pay University the difference within five (5) business day.
8. Confidentiality. University and Vendor shall keep confidential and not disclose to third parties any information developed or created under this Agreement or provided by the University or Vendor or by private individuals, organizations or public agencies pursuant to this Agreement, unless Vendor and University has received the prior written consent of the other party to make the disclosure or unless required by law or legal process. Only University and Vendor Personnel with a need to know may have access to or use University information; however, such restrictions shall not prohibit either party from disclosing the existence of the relationship, term of this Agreement, or the projected sales volume related to the terms of this Agreement. If Vendor is exposed to Marshall University's confidential information, Vendor will keep such information confidential and will act in accordance with any guidelines and applicable laws (such as HIPAA, FERPA and the Gramm-Leach Bliley Act.) Confidential information shall not include information that is a public record pursuant to West Virginia law, as solely determined by the University, and University will respond to requests for public records without any duty to give Vendor prior notice. However, University shall give reasonable notice of requests for Vendor's records not of a public nature as solely determined by the University. This provision shall survive termination of the Agreement. This obligation of confidentiality does not extend to information that is or shall become through no fault of Vendor available to the general public.
- 8.1. Freedom of Information Act. Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of West Virginia Freedom of Information Act ("FOIA" or "Act") and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement. Vendor shall provide University with its redacted proposal and this Agreement, redacted once fully executed (collectively "Redacted Documents"), which shall be reviewed and approved by the University in

accordance with its State of West Virginia FOIA laws. University agrees to provide the Vendor's Redacted Documents to all FOIA requests.

9. Non-Approved Suppliers. University understands that Vendor has entered into agreements with many suppliers and Supplier of products which (i) give Vendor the right to inspect such supplier' and supplier's plants and/or storage facilities and (ii) require such Vendor and suppliers to adhere to standards to ensure the quality of the products purchased by Vendor for or on behalf of University. University shall not require Vendor to use products from non-approved suppliers. The University and Vendor shall collaborate on any special supplier requests that will be mutually agreed upon. For the mutual protection of University and Vendor, each such supplier to (i) comply with Vendor's Product Quality Assurance Requirements and (ii) obtain from-a reputable insurance company acceptable to University and Vendor liability insurance (including products liability coverage) and contractual liability insurance in the amount of not less than Five Million Dollars (\$5,000,000.00) for each occurrence naming University and Vendor as additional insureds and which insurance shall not exclude the negligence of University or Vendor. A certificate evidencing such insurance shall be provided to University and Vendor upon the request of either party. Each such supplier shall also be required to sign an indemnity certificate (acceptable to University and Vendor) in which such supplier shall agree to defend, indemnify, and hold harmless University and Vendor from and against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses, and attorneys' fees which may arise as a result of using such supplier's product, except when such liability arises as a result of the sole negligence of Vendor and/or University. Each such supplier shall be required to provide to the Vendor's General Manager detailed ingredient statements for each food item purchased. University shall not require Vendor to use products from non-approved suppliers until such supplier has demonstrated its ability to comply with Vendor's Product Quality Assurance Requirements, and such insurance certificates, indemnity certificates, and ingredient statements have been provided. In the event the Non-Vendor Approved Supplier is unable to comply with the foregoing, Vendor and University shall meet to evaluate: (i) alternative supplier(s) for Vendor and University to utilize for the operation of the Services to replace the Non-Approved Supplier or (ii) actions necessary to assist the Non-Approved Supplier to become an approved supplier, or (iii) if the impediment is the lack of appropriate insurance, the need to purchase products from such Supplier despite the lack of insurance coverage described above.

10. Operational Matters.

- 10.1. The Proposer shall have exclusive rights to cater all special events held on the Marshall University campus unless the Senior Vice President of Operations or other University designee as provided to Vendor, in writing, grants an exception. Exceptions include, but are not limited to, ad hoc residence hall floor parties, sky suites (grandfathered in contracts only), tailgate parties held on University parking lots and food brought into Marcos.
- 10.2. On-site Vendor Personnel shall follow and adhere to the University policies and procedures applicable to the provision of the Services including, by way of example only and without limitation (a) sign-in procedures, (b) identification badges, (c) executing confidentiality statements, (d) participation in any required training, and (e) parking regulations.

- 10.3. Except as otherwise expressly provided in this Agreement, Vendor shall be responsible for payment of all its business expenses incurred while providing the Services.
- 10.4. Vendor shall be responsible for the costs of installation and use of telephone systems; costs of installation and use of the Marshall network for computers, telephones, point-of-sale terminals, time clocks, video surveillance and any other use. University shall invoice Vendor for waste removal in accordance with Exhibit A. Vendor shall pay for pest control only in the Food Service Operations areas.
- 10.5. The Vendor shall provide a central POS system to be used at all dining venues that will integrate with the campus card system. The contractor shall bear all costs of licensing, support and operation of the POS. Vendor and its subcontractors will honor a ten percent (10%) discount on Herd point retail purchases, excluding concession purchases, and provide other opportunities for discounts and promotions for using Herd points to encourage the University community to support dining services.
- 10.6. The Vendor shall provide an on-line interactive software platform for web-based Catering ordering.
- 10.7. Inventory of Smallwares and Expendable Equipment. Smallwares, defined as Chinaware, glassware, utensils, stainless steel flat ware and similar items, will be the standard of service for the Services, including catered events, unless the event arranger specifies disposable ware or compostable ware at the time of placing the order. Expendable Equipment shall be defined as any expendable item used in the preparation and service of meals such as pots, pans, cooking and serving utensils used in the Services.
- 10.8. Vendor shall inventory all Smallwares and Expendable Equipment, if any, owned by both University and Vendor, and shall determine the required inventory levels. Vendor and University shall execute a written inventory of all such Smallwares and Expendable Equipment, which inventory shall be attached hereto as Exhibit F. Any inventories below agreed upon levels shall be brought up to such levels at Vendor's expense. Vendor shall maintain required inventory levels providing replacements when needed.
- 10.9. Vendor agrees to timely cooperate and assist with any applicable performance improvement and quality assurance activities of the University as they may relate to the Services.
- 10.10. Vendor shall cooperate and make adjustments as necessary in the methods and timing for provision of Services under this Agreement so that other Vendors and University personnel can perform their independent obligations to the University.
- 10.11. International Student Workers Leave of Absence. Vendor will allow authorized leaves of absence when in compliance with immigration regulations.
- 10.12. Vendor shall maintain Human Resource practices that are industry leading and that support workplace diversity, employee retention and generally reflect the human resource practices of Marshall University
- 10.13. Removal of Vendor Personnel. If any Vendor Personnel repeatedly fails, in the University's sole discretion, to perform in a competent manner, and the University notifies Vendor in writing that the Vendor Personnel is no longer acceptable to the University, citing the grounds and specific supporting facts, then, after written

notification from the University, Vendor shall no longer schedule the Vendor Personnel to provide or support Services for the University under this Agreement or any other Agreement with the University. The University, in its sole discretion, may modify this prohibition upon presentation in writing by Vendor of adequate reasons and facts for modifying the prohibition.

- 10.14. Subcontracts/Joint Ventures. The Proposer is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. Marshall University will consider the Proposer to be the sole point of contact with regard to all contractual matters. The Proposer may, with the prior written consent of Marshall University, enter into written subcontracts for performance of work under this contract; however, the proposer is totally responsible for payment of all subcontractors.
- 10.15. Vendor Damage to the University Property. Vendor shall be responsible for the costs to return to "former" condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Vendor Personnel while performing activities arising under this Agreement. Vendor shall immediately report in writing the occurrence of any damage to the Building/Project Manager. Notwithstanding anything to the contrary set forth in this Agreement, to the extent a property loss is caused by Vendor's sole negligence and not exacerbated by factors beyond Vendor's control (including, but not limited to, improper activation of the fire suppression system or failure of the fire department to respond), Vendor's total aggregate liability for loss or damage to the building, equipment, improvements, and other property owned by University is limited to a maximum of Four Hundred Thousand Dollars (\$400,000.00) during the term of the Agreement. This clause shall survive termination of this Agreement.
- 10.15.1. Consequential Damages. In no event shall either party be liable for consequential, indirect or incidental damages (including punitive damages and lost profits), even if such party has been advised of the possibility of such damages in advance.
- 10.16. Vendor Clean-up. Vendor will remove all packing materials, rubbish and dirt from the University Premises associated with Vendors provision of Services under this Agreement.
- 10.17. Duties of the University. Except as otherwise expressly provided in this Agreement, the University will furnish Vendor with the space, facilities and accommodations, the University deems reasonably necessary to support Vendor in the provision of the Services contemplated by this Agreement.
- 10.18. Vendor Employees. Vendor shall recruit, hire, train, supervise, direct, and if necessary, discipline, transfer and discharge management and non-management employees working in the Food Service Operation. All personnel employed by Vendor shall at all times and for all purposes be solely in the employment of Vendor. Vendor shall provide management employees to supervise all Food Service Operation employees.
- 10.18.1. Vendor Non-management Employees. All non-management Food Service Operation employees shall be Vendor employees and shall

- be compensated directly by Vendor. Vendor shall consider University's employee policies and practices when establishing policies and practices for Vendor employees.
- 10.18.2 Personnel Obligations. Vendor shall be solely responsible for all personnel actions and claims arising out of injuries occurring on the job regarding employees on its payroll. Vendor shall withhold all applicable federal, state and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees, and workers' compensation, and shall file all required documents and forms.
- 10.18.3 Agreement Not to Hire. University acknowledges that Vendors' Chef and management employees are essential to Vendor's core business of providing management services and are familiar with Vendor's operating procedures and other information proprietary to Vendor. Therefore, University shall not, without Vendor's prior written consent, solicit for employment, hire, make any agreement with, or permit the employment (including employment by any successor contractor) in any facility owned or controlled by University, of any person who is or has been a Vendor Chef or management employee assigned to the Food Service Operation at the Premises, within the earlier of one (1) year after such employee terminates employment with Vendor or within one (1) year after termination of this Agreement. If University hires, make any agreement with or permits employment of any such employee in University operation providing food service within the restricted period, it is agreed by University that Vendor shall suffer damages and University shall pay Vendor as liquidated damages, and not as a penalty, an amount equal to the then-current annual salary paid by Vendor of each employee hired by University. This sum has been determined to be reasonable by both parties after due consideration of all relevant circumstances. This provision shall survive termination of this Agreement.
- 10.19 Inventory of Food, Beverages, Goods and Supplies. Vendor shall purchase and own inventories of food, beverages, goods, merchandise, and supplies. Upon termination or expiration of this Agreement, University shall purchase from Vendor, or shall cause the successor contractor to purchase from Vendor, any remaining inventory at Invoiced Amount.
- 10.20 University's Facility Obligations. University shall be responsible to provide Premises and equipment for the Food Service Operations, including, but not limited to, kitchen equipment, suitable office space, and fire extinguishing equipment. University shall also be responsible to provide at the Premises, electricity, gas, water and other utilities, ventilation, security services, telephone services, broadband internet access, pest extermination and control, excluding Vendor Food Service Operation areas, window cleaning (including power washing

as necessary), new equipment, replacement of inoperable or worn equipment, maintenance and repairs, refuse removal, painting and decorating. University shall also be responsible to open and maintain internet protocol and port connections necessary to operate Vendor's time and attendance applicable

10.21 Equipment.

10.21.1 Food Service Equipment. Vendor and University have inventoried University's Food Service Operations equipment. Upon termination of this Agreement, Vendor shall surrender such inventory of equipment to University.

10.21.2 Capital Equipment. Except for Vendor's Investment set forth in Exhibit A, University shall provide capital equipment as required for the Food Service Operations. In the event University requests Vendor to purchase equipment on University's behalf for University's facility, any equipment purchases made pursuant to this Section shall be billed at the price quoted by Vendor and paid by University separate from the financial arrangement detailed in Exhibit A.

10.21.3 Equipment Failure. If University's dishmachine equipment becomes inoperative for more than seven (7) operating days, requiring substituted use of disposable in lieu of reusable items, University shall reimburse Vendor for such disposables, at Invoiced Amount, until such time as the dishmachine equipment is again operative. However, if dishmachine equipment becomes inoperative due to Vendor's sole negligence, then University shall not be responsible to reimburse Vendor for such disposables. If electrical or equipment failure occurs solely as a result of the gross negligence of the University and causes loss of refrigerated or frozen products, University shall reimburse Vendor for such loss, based on Invoiced Amount.

10.22 Sanitation. University shall be responsible for costs involved in setting up and cleaning the Premises for functions not managed by Vendor. The responsibilities of the parties with respect to the usual and customary cleaning and sanitation of the Food Service Operations areas of the Premises shall be as follows:

10.22.1 Food, Preparation, Storage and Serving Areas. Vendor shall be responsible for housekeeping and sanitation in food preparation, storage and serving areas, including equipment in such areas. University shall clean walls above shoulder height, ceilings, ceiling fixtures, air ducts, and hood vent systems (per local ordinance).

10.22.2 Customer Dining and Traffic Areas. Vendor shall be responsible for housekeeping and sanitation as follows:

- Memorial Student Union food court – dining seating areas and retail service areas including the enclosed Starbucks.
- Huntington Market (located within the Memorial Student Union and connected to the food court) –

retail service space area, including millwork, serving counters and kitchen/storage space

- John Marshall Faculty/Staff dining room (located within the Memorial Student Union) –millwork, buffet serving areas, seating areas, floor and carpet within the room, excluding windows.
- Towers Marketplace – housekeeping and sanitation of entire space, excluding windows.
- Harless Dining Hall – housekeeping and sanitation of entire space, excluding the activities room located on the southeast portion of the building which also has its own separate entrance and excluding windows.
- Drinko Library Coffee Shop – housekeeping and sanitation of entire coffee shop area and restrooms, excluding windows.
- Smith Hall Simply to Go retail space – counters only

Unless otherwise provided in this Section, University shall be responsible for the housekeeping and sanitation in the Food Service operations.

For the avoidance of doubt, if the resident dining or retail operations has fixed walls with a defined area, Vendor shall be responsible as defined above. If such resident dining or retail operations has no walls with no defined areas, University shall have the responsibility for housekeeping and sanitation of such areas.

10.22.3 Refuse. Vendor shall transport refuse to designated collection areas.

10.23 Maintenance. University shall, at University's expense, provide maintenance personnel and outside maintenance services, parts and supplies required to properly maintain the Premises and University-owned equipment. Provided that, if it is determined that maintenance or repairs are caused by the sole negligence of Vendor, its subcontractors or employees, then Vendor shall reimburse University for the cost of the maintenance or repair to the Premises and University-owned equipment in accordance with section 10.15 above.

10.24 Vehicle. Vendor shall provide a vehicle for use in the Food Service Operations. Vendor shall be responsible for the vehicle's gas, oil, maintenance and repair, and automobile liability insurance.

11. Miscellaneous.

11.1. Use of the University Name and Marks. The University acknowledges Vendor's right to make, without the consent of the University, public statements regarding the existence of the contract, its terms and conditions and an accurate description of the products or services being supplied. However, except as permitted by the previous sentence, Vendor may never make any public statement (for example a press release or any form of advertisement) describing the University's relationship with Vendor or implying or stating the University's endorsement of Vendor or Vendor's product or services without the prior written consent of the

- University's Office of Communications. The University may withhold its consent in its absolute discretion. Vendor acknowledges that the University will require ten (10) business days to consider any request for consent. Neither party will use the others marks or logos without the express written permission of the other.
- 11.2. Use of Premises or the University Property. Vendor shall neither use nor allow Vendor Personnel to use any part of the University Premises or property for any purpose other than the performance of the Services under this Agreement.
- 11.3. Independent Contractor Status of Parties. It is expressly understood that Vendor is an independent contractor and not the agent, partner, or employee of the University. Vendor and Vendor Personnel are not employees of the University and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Vendor shall not have any authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Vendor has such authority.
- 11.4. Assignment. Vendor or University may not subcontract, assign or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the other party, except that either party may, without prior approval and without being released from any of its responsibilities hereunder, assign this Agreement to any affiliate or wholly-owned subsidiary of such party or to another State agency. Notwithstanding any consent by the University to any assignment, Vendor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the University. The Vendor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.
- 11.5. Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated on the Signature page (or to such other addressee as may be later designated by written notice) by personal delivery, nationally recognized overnight delivery service, courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after mailing, except in the case of overnight delivery by a nationally recognized delivery service in which case notice shall be effective the day after deposit with the delivery service.
- 11.6. Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 11.7. Governing Law. Construction and Venue. All matters arising out of or related to this Agreement shall be governed by and construed under the laws of the State of West Virginia without regard for principles of choice of law. Any claims, demands, or actions asserted against Marshall University, on behalf of the Board of Governors, for damages shall be brought in West Virginia Legislative Claims Commission. Vendor, its successors and assigns, consent to the jurisdiction of the West Virginia courts with respect to any other claims arising under this Agreement.

- 11.8. Headings. The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.
- 11.9. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 11.10. Survivability. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.
- 11.11. Execution. This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed and negotiated by the parties.
- 11.12. No Third Party Rights. Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- 11.13. Force Majeure. Neither Vendor nor the University shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall; (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.
- 11.14. Tax Exempt Status. Vendor acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of West Virginia.
- 11.15. Dispute Resolution. Vendor and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
- 11.16. Federal Grant and Contract Terms & Conditions. Federal funds may be used to pay for all or part of these purchases under this Agreement. These terms and conditions are dictated by the funding agency. The University must comply by insuring that the Vendor understands and can abide by the funding agency requirements and as such, this Agreement is subject to the terms and conditions dictated by the funding agency. The cited references carry the same force and effect as if given in full text. All references to granting agency in the regulations cited are understood to refer to University, all references to grantee or recipient are understood to refer to Vendor.

- 11.17. Entire Agreement. Amendment. This Agreement and Its Exhibits constitute the entire understanding between the parties with respect to the subject matter and may not be amended except by a written document signed by an authorized representative of each party. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties. Email correspondence shall not qualify as a written document signed by an authorized signatory.
- 11.18. Authority. Each individual executing this Agreement, on behalf of or as a representative of a party, represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding upon University and Vendor in accordance with its terms.
- 11.19. Electronic Signatures. The parties agree that this Agreement and subsequent Amendments may be executed using electronic contracting technology using symbols or other data in digital form and agree that such electronic signature is the legal equivalent of a manual signature binding the parties to the terms and conditions stated herein.

12. Exhibits. The following Exhibits are attached hereto and incorporated herein:

- A FINANCIAL ARRANGEMENTS
- B MEAL PLANS AND RATES, RETAIL OPERATIONS, GUEST MEALS, PRESEASON, SUMMER CAMP AND CONFERENCES
- C RFP/ADDENDUMS/PROPOSAL/
- D APPROVED LEGAL EXCEPTIONS
- E EXPECTATIONS SESSIONS
- F SMALLWARES AND EXPENDABLE EQUIPMENT INVENTORY

13. Notices

Notices to Sodexo to be addressed as follows:	Notices to Marshall University to be addressed as follows:
<p>Sodexo America, LLC Attention: Jim Jenkins, CEO Universities North America, East 11044 Research Boulevard, Suite B-350 Austin, Texas 78759</p> <p>and:</p> <p>Sodexo America, LLC Attention: Law Department 9801 Washingtonian Boulevard Gaithersburg, Maryland 20878</p>	<p>Attn: Angela White-Negley, Director Marshall University Office of Purchasing One John Marshall Drive Huntington WV 25755-4100</p>

14. Signatures

MARSHALL UNIVERSITY

SODEXO AMERICA, LLC

By: Angela White-Negley
Angela White Negley (Aug 23, 2019)

By: Cal Thetford
Cal Thetford (Aug 20, 2019)

Angie White-Negley
Director, Office of Purchasing
Aug 23, 2019

Cal Thetford
Senior Vice President, Universities North America, East
Aug 20, 2019

Date

Date

This Agreement becomes binding when signed by both parties.

LIFE OF CONTRACT PAGE

LIFE OF CONTRACT: This contract becomes effective on August 15, 2019 and extends for a period of **one (1) year** or until such reasonable time thereafter as is necessary to obtain a new contract. Such "reasonable time" shall not exceed twelve (**12**) months upon expiration of one (**1**) year from the effective date of this contract by giving the Director of Purchasing sixty (**60**) days written notice.

RENEWAL: This contract may be renewed upon mutual written consent, submitted to the Director of Purchasing Sixty (60) days prior to the date of expiration. Such renewal shall be in accordance with the terms and conditions of the Agreement and shall be limited to nine (9) successive one (1) year periods.

CANCELLATION: The Director of Purchasing reserves the right to cancel this contract in accordance with the terms and conditions of this Agreement.

OPEN MARKET CLAUSE: The Director of Purchasing may authorize a spending unit to purchase in the open market, without the filing of a requisition or cost estimate, items specified on this contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work).

TIME: Time consumed in delivery or performance is of the essence.

ORDERING PROCEDURE: Departments shall submit a requisition for Services covered by this Agreement to the Purchasing office. Purchasing will then issue a purchase order to the Vendor as authorization for the Services requested. If the Vendor accepts credit cards, purchases may also be made using the P-card up to the established transaction limit of Five Thousand Dollars (\$5,000) for the department. Prior approval from Vendor must be obtained for any p-card transaction in excess of Five Thousand Dollars (\$5,000) per requisition. In accordance with Exhibit D, number 8, p-cards may not be used to pay resident board bills and summer camps.

FUNDING PARAGRAPH: Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

CONTRACT PRICING: Unless otherwise allowed by the Director of Purchasing, price increases will be approved only at the beginning of each renewal period. Requests for price increases must be received in writing by the Director at least sixty (**60**) days in advance of the effective date. Vendors may add products throughout the term of this contract when it is in the best interest of the University.

The Director at Marshall University will determine which products will be added. Price decreases will be "passed through" to Marshall University.

EXHIBIT A pg. 1 of 7
FINANCIAL ARRANGEMENTS

A. Definitions. The following definitions shall apply to this Agreement:

1. **Accounting Period.** A period of a calendar month, twelve (12) of which shall constitute an accounting year.
2. **Branded Concepts.** Food and beverage systems operated by Vendor through national and regional third party license agreements or franchise agreements, subcontracts, or through Vendor's own in-house trademarked brands.
3. **Catering.** Food and beverage service for meetings, conferences, dinners, parties and other functions requested by University or a third party.
4. **Charge.** A fee established by Vendor for goods or services provided by Vendor.
5. **Gross Sales.** All sales of food, beverages, goods, merchandise and services in the Food Service, including sales taxes.
6. **Invoiced Amount.** The invoiced amounts to Vendor for goods and services, including food, beverages, merchandise, cleaning products, equipment, supplies, and other contracted services. Many of Vendor's manufacturers, suppliers and distributors provide rebates, allowances, and other payments to Vendor based on Vendor's purchasing commitments, aggregate growth incentives and other factors. Prompt payment discounts and all rebates, allowances and other payments obtained from manufacturers, suppliers and distributors, shall be retained by Vendor.
7. **Net Sales.** All sales of food, beverages, goods, merchandise and services in the Food Service, excluding sales and other applicable taxes.
8. **Premises.** University's Food Services facilities located at Huntington, West Virginia.

B. Retail Program.

1. **Cash Collection.** Vendor shall retain all cash receipts realized from the retail program and shall pay all operating expenses associated with the retail program. Any profit or loss shall be for Vendor's account.

2. **Commission.** Vendor shall pay University commissions as follows:

a. **Retail Commissions.** Commencing with the 2019-2020 academic year, Vendor shall pay University a guaranteed annual commission equal to Nine Hundred Seventy Three Thousand Nine Hundred Six and 87/100 Dollars (\$973,906.87) or the following percentages of Net Sales, whichever is greater:

Retail	21.50% of Net Sales
Skybox	15.00% of Net Sales
Starbucks	16.00% of Net Sales
Catering	21.50% of Net Sales

All Meal Plan Flex are excluded from Net Sales for commissions' purposes only.

Such commission shall be paid in accordance with Subsection 2.c below, provided that at the end of each academic year, Vendor shall reconcile the guaranteed amount against the commission amount already paid to University and pay University any additional amounts due and owing, if any.

Commencing with the 2020-2021 academic year, and each subsequent academic year thereafter, the guaranteed annual commission shall equal the previous academic years actual commission paid.

b. Concession Commissions:

i. Vendor shall pay University a guaranteed annual commission equal to Two Hundred Fifty Thousand Dollars (\$250,000.00) for each academic year or the following percentages of Annual Net Sales, whichever is greater:

<u>Annual Net Sales Levels*</u>	<u>Commission</u>
\$0.00 to \$300,000.00	18% of total annual Net Sales
\$300,000.01 to \$400,000.00	23% of incremental Net Sales
\$400,000.01 to \$500,000.00	26% of incremental Net Sales
\$500,000.01 to \$600,000.00	30% of incremental Net Sales
\$600,000.01 and above	35% of incremental Net Sales

*Beer and alcoholic beverage Net Sales shall be excluded in the above Annual Net Sales Levels in calculating the commissions owed to University. Commissions on beer and alcoholic beverage Net Sales shall be paid to University in accordance with subsection b.ii below. In addition, commissions paid on beer and alcoholic Net Sales shall be excluded in calculation and reconciliation of the guaranteed commission above.

Commission rates and financial terms shall be negotiated separately should University host a large scale concert in its stadium, as a written addendum to this Agreement.

Such commission shall be paid in accordance with Subsection 2.c below, provided that at the end of each academic year, Vendor shall reconcile the guaranteed amount against the commission amount already paid to University and pay University any additional amounts due and owing, if any.

Commencing with the 2020-2021 academic year, and annually thereafter, the Annual Net sales Levels, specified under subsection B.2.b.i above, shall be increased by the percentage increase in the CPI, averaged for the prior twelve (12) month period. The commission in the 2020-2021 academic year and in subsequent years thereafter shall be paid on such adjusted Annual Net Sales Levels. Upon request, Vendor shall provide University with documentation supporting all calculations.

ii. Vendor shall pay University a commission as follows:

Beer and alcoholic beverages 45% of Net Sales

c. Vendor shall prepare a statement of sales and the commission for each Accounting Period and shall submit such statement with any payment due to University for such Accounting Period. Vendor shall pay the commission due to University at the appropriate settlement time; however, Vendor shall first offset against such commission any past due amounts owed by University to Vendor

C. Invoicing Procedures.

1. Meal Plan Billing. Vendor shall submit invoices to University at the end of each week for all unlimited meal plans in accordance with Exhibit B, Section A.1, all block meals in accordance with Exhibit B, Section A.1 per semester when sold, and all Commuter and Faculty/Staff Meal Plans, in accordance with Exhibit B, Section A.2, at the end of each week, for the resident dining program based on the number of meal plan participants for the period. Payment shall be due within thirty (30) days after date of invoice.

2. At the end of each week. Vendor shall invoice University for all Catering functions and any other non-resident dining program meals and services provided during such period. Payment shall be due within thirty (30) days after date of invoice.

3. University agrees that all third party Catering events shall be administered in accordance with Vendor's policies for payment and collection. If University requests that Vendor deviate from their policies, University shall be liable to Vendor for any outstanding receivables related thereto. University shall pay any such outstanding amounts within thirty (30) days after date of invoice.

4. All payment shall be made by electronic funds transfer into a bank account designated by Vendor or as otherwise directed by Vendor. Upon termination of this Agreement, all outstanding amounts shall become immediately due and payable.

D. Right to Offset and Prepayment

1. At any time when University is past due on any payment obligations to Vendor, Vendor shall have the right to offset all or any portion of such outstanding receivables or any other sums due Vendor from University, from any amounts owed by Vendor to University.

2. In the event that any two (2) resident board bill payments are late by more than thirty (30) days within any given twelve (12) month period, Vendor in its sole discretion shall have the right to require that University pay, on a prepayment basis at least one (1) week in advance of each Accounting Period, the estimated amount due Vendor for that Accounting Period. The estimated amount shall be adjusted and reconciled to the actual amount in the next prepayment invoice or, if University is no longer past due on its obligations to Vendor, with the next invoice due under Subsection C above. This remedy is not intended to be exclusive and is in addition to any other rights or remedies available to Vendor at law or in equity.

E. Investments.

1. Previous Investment 1. On or about September 1, 2017, Vendor provided funds in an amount not to exceed Three Hundred Thirteen Thousand, Six Hundred Sixty-nine and 24/100 Dollars (\$313,669. 24) for the renovation of the concourse and the purchase of equipment

required for the expansion of beer sales at the Joan C. Edwards Stadium ("Previous Investment 1"). As of August 15, 2019, the total unamortized amount for Previous Investment 1 is Two Hundred Fifty Nine Thousand Thirteen and 43/100 Dollars (\$259,013.43). Vendor shall re-amortize the unamortized portion of the Previous Investment 1 on a straight-line basis over ten (10) years, commencing August 16, 2019. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Previous Investment 1, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

2. Previous Investment 2. On or about March 1, 2019, Vendor provided funds in an amount not to exceed Five Million Thirty Thousand Dollars (\$5,030,000.00) for the renovation of the Towers dining hall and Student Union food court operations and to transform the athletic concession stands graphics ("Previous Investment 2"). As of August 15, 2019, no money has been expensed and therefore the total unamortized amount for Previous Investment 2 is Five Million Thirty Thousand Dollars (\$5,030,000.00). Vendor shall re-amortize the unamortized portion of the Previous Investment 2 on a straight-line basis over ten (10) years, commencing August 16, 2019. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Previous Investment 2, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

3. Investment 1. On or about June 1, 2020, Vendor shall provide to University an amount not to exceed Four Hundred Eighty Two Thousand Twenty One Dollars (\$482,021.00) for the renovation of the Robert C. Byrd biotechnology science building Food Service operations ("Investment 1"). Vendor shall amortize Investment 1 on a straight-line basis, commencing with the date renovations commence, and continuing through August 15, 2029. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Investment 1, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

4. Investment 2. On or about June 1, 2020, Vendor shall provide to University an amount not to exceed Six Hundred Eighty Thousand Four Dollars (\$680,004) for the renovation of the Harless Dining Hall ("Investment 2"). Vendor shall amortize Investment 2 on a straight-line basis, commencing with the date renovations commence, and continuing through August 15, 2029. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Investment 2, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

5. Investment 3. On or about June 1, 2020, Vendor shall provide to University an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) to be used in the University's athletic operations ("Investment 3"). Vendor shall amortize Investment 3 on a straight-line basis, commencing with the date renovations commence, and continuing through August 15, 2029. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Investment 3, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

6. Investment 4. On or about June 1, 2021, Vendor shall provide to University an amount not to exceed Thirty Fifty Thousand Dollars (\$35,000.00) for the renovation of the

Drinko Library Food Service operations ("Investment 4"). Vendor shall amortize Investment 4 on a straight-line basis, commencing with the date renovations commence, and continuing through August 15, 2029. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Investment 4, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

7. Investment 5. On or about June 1, 2021, Vendor shall provide to University an amount not to exceed Seventy Five Dollars (\$75,000.00) for the renovation of the Natural Food Service operations in the Student Recreation center ("Investment 5"). Vendor shall amortize Investment 5 on a straight-line basis, commencing with the date renovations commence, and continuing through August 15, 2029. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Investment 5, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

8. Investment 6. On or about June 1, 2021, Vendor shall provide to University an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) for the renovation of the Simply To Go Food Service operation in the Smith Music Hall ("Investment 6"). Vendor shall amortize Investment 6 on a straight-line basis, commencing with the date renovations commence, and continuing through August 15, 2029. Such amortization shall be charged as an operating expense of the Food Service. Operating expenses shall not impact Net Sales for commission purposes. University shall own Investment 6, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

9. If prior to the complete amortization of any of the Investments under this Subsection E any of the following events occur:

- (i) this Agreement expires or is terminated in whole or in part;
- (ii) this Agreement is amended and such modification has an adverse economic impact on Vendor; or
- (iii) Vendor's procurement programs are no longer utilized (i.e. Vendor's approved vendors) for the purchase of goods in connection with the Food Services provided under this Agreement;

then University shall reimburse Vendor, on the expiration date, or within five (5) days after receipt by either party of any notice of termination under this Agreement or within ten (10) days after the occurrence of (ii) or (iii) above, the unamortized portion of each Investment. University agrees to de-identify and, if applicable, remove any proprietary elements of any of the Investments as directed by Vendor.

F. Contributions/Fees

1. Contribution. Within thirty (30) days of the Commencement Date of this Agreement, Vendor shall make a one (1) time payment to University an amount equal to Five Hundred Thousand Dollars (\$500,000.00) for University to use at its sole discretion ("Contribution"). Vendor shall amortize the Contribution on a straight-line basis over ten (10) years, commencing with the date payment is made. In the event this Agreement expires or is terminated for any reason prior to the complete amortization of the Contribution, University

shall reimburse Vendor within five (5) days after receipt by either party of any notice of termination, the unamortized portion of the Contribution.

2. Big Green Scholarship Foundation. Vendor agrees to become an annual member of the Big Green Scholarship Foundation at the Leaders Level (\$1,500 - \$4999) and shall purchase a minimum of four (4) season tickets in both football (Sections 108-118) and basketball (Sections 102-113) each season and agrees to sponsor a table (currently \$2,000) at the Herdspys annual scholarship dinner).

3. Waste Removal Fee. Commencing August 16, 2019, and each subsequent year thereafter, provided that this Agreement remains in effect, Vendor shall reimburse University an amount equal to the actual cost each month, prorated for any partial month, for waste removal in the Food Service operations ("Waste Removal Fee"). Such Waste Removal Fee shall be calculated based on the actual number of days each location is open. If this Agreement expires or is terminated for any reason prior the first day of any month, Vendor shall pay the prorated portion of the Waste Removal Fee for the partial month through date of termination and Vendor shall have no further obligation with respect to this Waste Removal Fee.

G. Funds.

1. Annual Equipment and Repair Fund. Commencing August 16, 2019, and each subsequent August 16th thereafter, provided this Agreement remains in effect, Vendor shall accrue funds in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) per year to be used towards the repair and maintenance of equipment as mutually agreed upon by the parties ("Equipment Fund"). Unused Equipment Funds shall roll over from year to year. In the event this Agreement is terminated or expires for any reason, any Equipment Funds accrued and unused shall be for University's account and Vendor shall have no further obligation with respect to this Equipment Fund.

2. Presidential Catering Fund. Commencing August 16, 2019, and each August 16th thereafter, provided this Agreement remains in effect, Vendor shall provide in-kind Presidential catering services to University in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) for each year ("Presidential Catering Fund"). Funds shall be deducted as Presidential catering events are provided and a balance of the Presidential Catering Fund will be provided to University upon request. Any Presidential Catering Funds not used by the end of each year shall be retained by Vendor. If this Agreement is terminated for any reason, any remaining Presidential Catering Funds shall be retained by Vendor and Vendor shall have no further obligation with respect to this Presidential Catering Fund.

3. Student Focused Catering Fund. Commencing August 16, 2019, and each August 16th thereafter, provided this Agreement remains in effect, Vendor shall provide in-kind student focused catering services to University in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) for each year ("Student Focus Catering Fund"). Funds shall be deducted as student focus catering events are provided and a balance of the Student Focus Catering Fund will be provided to University upon request. Any Student Focus Catering Funds not used by the end of each year shall be retained by Vendor. If this Agreement is terminated for any reason, any remaining Student Focus Catering Funds shall be retained by Vendor and Vendor shall have no further obligation with respect to this Student Focus Catering Fund.

4. Resident Assistant/Resident Directors Meals. Commencing August 16, 2019, and each August 16th thereafter, provided this Agreement remains in effect, Vendor shall provide University with ninety two (92) complimentary Unlimited Plus \$50 Flex Dollars (Meal Plan A) meal plans for University to distribute to Resident Assistants and Resident Directors ("RA/RD"). Unused Flex Dollars shall roll over from the Fall semester to the Spring semester. Any unused RA/RD Flex Dollars at the end of the Spring semester shall be forfeited and shall be for Vendor's account. If this Agreement expires or is terminated for any reason, any remaining RA/RD Flex Dollars shall be forfeited and shall be for Vendor's account and Vendor shall have no further obligation with respect to these RA/RD meal plans.

H. Financial Adjustments.

1. Adjustments. The financial arrangement set forth in this Agreement shall be adjusted to reflect additional costs incurred by Vendor (i) in connection with the implementation of legislation or other legal requirements, including, but not limited to, the implementation of the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010, which comprise the health care reform of 2010, or other health care rules and regulations, or any modifications thereto or (ii) increases in benefit costs paid by Vendor on behalf of covered employees. The adjustment to the financial arrangement shall be effective from the date the events of (i) and/or (ii) occur.

2. Commencing on August 16, 2020, and annually thereafter, the meal plan rates and other meal rate(s) shall be increased by the percentage increase in the Consumer Price Index – Food Away from Home ("CPI"), averaged for the prior twelve (12) month period.

EXHIBIT B pg. 1 of 5

MEAL PLANS AND RATES, RETAIL OPERATIONS, GUEST MEALS, PRESEASON, SUMMER CAMP AND CONFERENCES

- A. Resident Dining Program. The following meal plans selected by University shall be available to resident dining, commuter and faculty/staff patrons:

1. Resident Dining Plans:

Meal Plan A	Unlimited meals per week, plus \$50 Flex and 5 guest passes per semester
Meal Plan B	Unlimited meals per week, plus \$150 Flex and 5 guest passes per semester
Meal Plan C	Unlimited meals per week, plus \$250 Flex and 5 guest passes per semester
Meal Plan D	175 block meals per semester, plus \$625 Flex and 5 guest passes per semester
Meal Plan E	175 block meals per semester, plus \$525 Flex and 5 guest passes per semester
Meal Plan F	160 block meals per semester, plus \$625 Flex and 5 guest passes per semester
Meal Plan G	140 block meals per semester, plus \$725 Flex and 5 guest passes per semester
Meal Plan H	140 block meals per semester, plus \$65 Flex and 5 guest passes per semester

All resident students are required to purchase one (1) of the above Meal Plans.
Freshmen are required to purchase one (1) of the above Meal Plan, excluding Meal Plan H.

Unused Flex shall roll over from the Fall semester to the Spring semester, provided that the meal plan participant purchases a meal plan for the Spring semester. Any unused Flex remaining at the end of the Spring semester shall be forfeited and shall be for Vendor's account.

2. Commuter and Faculty/Staff Meal Plans.

Meal Plan I	20 block meals per semester, plus \$50 Flex per semester
Meal Plan J	12 block meals per semester, plus \$150 Flex and 2 guest passes, per semester
Meal Plan K	20 block meals per semester, plus \$100 Flex and 5 guest passes, per semester
Meal Plan L	30 block meals per semester, plus \$200 Flex per semester
Meal Plan M	50 block meals per semester, plus \$100 Flex per semester

Unused block meals and Flex shall roll over from semester to semester, year to year until such time student is no longer enrolled with University or faculty/staff members are no longer employed by University. Any unused block meals and Flex remaining when student no longer enrolled with University or faculty/staff member no longer employed by University shall be forfeited and shall be for Vendor's account.

3. Meal exchange is available at all retail locations with the exception of the Memorial Student Center. Meal exchange is accepted at the Memorial Student Center concept locations only after 1:30 PM. Students on Meal Plan A, Meal Plan B, or Meal Plan C may exchange thirty (30) meals per semester with the retail operations. Students on all other Meal Plans have no limitation on frequency of exchanges per semester.

University grants Vendor the exclusive right to provide University with meal related to meal plans, debit card points and flex points for University to resell to its students, faculty and staff at a specified rate per meal or daily rate.

B. Dining Program Rates. The following dining rates shall be in effect for the 2019-2020 academic year as follows:

SLIDING SCALE			Daily Rates			Semester Prices				
			Meal Plan A	Meal Plan B	Meal Plan C	Meal Plan D	Meal Plan E	Meal Plan F	Meal Plan G	Meal Plan H
2,185	-	Above	\$10.88	\$11.94	\$13.23	\$1,286	\$1,231	\$1,238	\$1,238	\$1,065
2,160	-	2,184	\$10.95	\$12.01	\$13.30	\$1,290	\$1,235	\$1,242	\$1,242	\$1,069
2,135	-	2,159	\$11.02	\$12.08	\$13.37	\$1,294	\$1,239	\$1,246	\$1,246	\$1,073
2,110	-	2,134	\$11.09	\$12.15	\$13.44	\$1,298	\$1,243	\$1,250	\$1,250	\$1,077
2,085	-	2,109	\$11.16	\$12.22	\$13.51	\$1,301	\$1,246	\$1,253	\$1,253	\$1,080
2,060	-	2,084	\$11.23	\$12.29	\$13.58	\$1,305	\$1,250	\$1,257	\$1,257	\$1,084
2,035	-	2059	\$11.27	\$12.33	\$13.62	\$1,309	\$1,254	\$1,261	\$1,261	\$1,088
2,010	-	2034	\$11.31	\$12.37	\$13.66	\$1,313	\$1,258	\$1,265	\$1,265	\$1,092
1,985	-	2009	\$11.35	\$12.41	\$13.70	\$1,317	\$1,262	\$1,269	\$1,269	\$1,096
1,960	-	1984	\$11.39	\$12.45	\$13.74	\$1,321	\$1,266	\$1,273	\$1,273	\$1,100
1,935	-	1959	\$11.43	\$12.49	\$13.78	\$1,326	\$1,271	\$1,278	\$1,278	\$1,105
1,910	-	1934	\$11.47	\$12.53	\$13.82	\$1,330	\$1,275	\$1,282	\$1,282	\$1,109
1,885	-	1909	\$11.51	\$12.57	\$13.86	\$1,334	\$1,279	\$1,286	\$1,286	\$1,113
1,860	-	1884	\$11.55	\$12.61	\$13.90	\$1,338	\$1,283	\$1,290	\$1,290	\$1,117
1,835	-	1859	\$11.59	\$12.65	\$13.94	\$1,342	\$1,287	\$1,294	\$1,294	\$1,121
1,810	-	1834	\$11.63	\$12.69	\$13.98	\$1,346	\$1,291	\$1,298	\$1,298	\$1,125
1,785	-	Below	\$11.67	\$12.73	\$14.02	\$1,350	\$1,295	\$1,302	\$1,302	\$1,129

Meal Plan I	\$164.04 per person, per semester
Meal Plan J	\$192.12 per person, per semester
Meal Plan K	\$203.21 per person, per semester
Meal Plan L	\$306.63 per person, per semester
Meal Plan M	\$310.48 per person, per semester

Rates for the above meal plans are based on a required minimum of two hundred fourteen (214) meal plan days for each academic year and an average minimum number of meal plan participants for each academic semester equal to two thousand sixty nine (2,069) participants. Freshman are required to purchase either Meal Plan A, Meal Plan B, or Meal Plan C.

Rates for the above Meal Plans include the Flex associated with each Plan

- C. Retail Program. Vendor shall provide retail products at the Premises and at such other locations as University and Vendor shall agree.
1. Branded Concepts. Vendor shall operate the Branded Concepts at University's Premises under the conditions set forth below.
 - a. Vendor shall control all aspects of the Branded Concepts, including menus, recipes, pricing, staffing and hours of operation.
 - b. Representatives of the licensor, franchisor or subcontractor of the Branded Concepts shall be allowed access to the Premises during reasonable business hours for quality assurance inspections of the Branded Concepts.
 - c. Vendor shall notify University at least twenty (20) days in advance of any termination or expiration of a license agreement, franchise agreement or subcontract related to a Branded Concept. Vendor and University shall mutually determine what operation, if any, will replace such Branded Concept. In any event, the Branded Concepts operation shall terminate upon termination or expiration of this Agreement.
 - d. Upon termination or expiration of this Agreement, Vendor shall remove the equipment related to the Branded Concepts in accordance with the terms of the applicable license or franchise agreements.
 - e. Vendor shall operate or cause to be operated the following Branded Concepts with the applicable fees applied as operating expenses:
 1. Chick Fil A
 2. Steak N Shake
 3. Mein Bowl
 4. Denny's
 5. LaFamiglia
 6. Starbucks fully licensed store
 7. Simply To Go
 - f. University has asked Vendor to operate a Starbucks store at the Premises. University understands that Starbucks Corporation will assess an early termination fee in the event that University requests Vendor to discontinue operating the Starbucks store. Provided that the Starbucks store has operated for at least one (1) year, Starbucks shall calculate the termination fee by adding (i) the average sum of royalty and advertising fees paid over the last twelve (12) months, multiplied by thirty-six (36) (or multiplied by the actual number of months remaining in the term of the Starbucks store agreement, if fewer than thirty-six (36) months remain) and (ii) the average value of products purchased from Starbucks for the last twelve (12) months multiplied by twelve (12) (or multiplied by the actual number of months remaining in the term of the Starbucks store agreement, if fewer than twelve (12) remain). If the store has been open less than one (1) year, the termination fee shall be determined by adding the (i) royalties and advertising fees for the last full calendar month of the store's operation multiplied by thirty-six (36) and (ii) product purchases for the last full calendar month of the store's operation multiplied

by twelve (12). In no event shall the early termination fee exceed One Hundred Fifty Thousand Dollars (\$150,000.00). The entire amount of termination fee shall be payable by University within thirty (30) days after the effective date of termination.]

2. Retail and Concession Prices. The prices charged by Vendor for food and other products served by Vendor in the retail and cafeteria operations shall be reasonable and competitive with prices charged in comparable establishments in the geographic area of the Premises for comparable products, similarly prepared and of like quality and portion. No less than annually, Vendor shall adjust pricing to reflect the increase in the Producer Price Index for Food and Beverage Stores.

3. Catering Functions. Prices for Catering functions, including but not limited to University or third party functions, shall be established by mutual agreement of the parties. University shall be responsible for collection of amounts due for Catering functions. Vendor shall prepare and submit invoices to [University for] individuals or groups served by Vendor at Catering functions, which invoices shall provide for payment to University.

D. Partial Service Days. Charges for partial service days at the beginning or end of an academic term or vacation period shall be based on a fraction of the dining rate as follows:

Breakfast:	1/2 of rate
Breakfast & Lunch:	2/3 of rate
Lunch & Dinner:	3/4 of rate
Dinner:	2/3 of rate
Brunch:	2/3 of rate

E. Guest Meals in Resident Dining Facilities. Prices for guest meals purchased in resident dining facilities shall be as follows:

Breakfast:	\$7.16 plus tax, if applicable
Lunch:	\$9.01 plus tax, if applicable
Dinner:	\$10.61 plus tax, if applicable
Late Nite:	\$6.03 plus tax, if applicable
Brunch:	\$9.27 plus tax, if applicable

F. Unscheduled Service Charges. For services not included in the resident dining rate, such as service on Freshmen Days, between semesters, commencement and the summer session, Vendor shall provide Food Service Vendor will provide Food Service for an additional Two Dollars (\$2.00) per person above the regular guest meal rate, in accordance with Section E above, with a guarantee of seventy five (75) meal participants. The following holidays will be an additional Four Dollars (\$4.00) per person above the guest meal rate, in accordance with Section E above, with a guarantee of seventy five (75) meal participants: Thanksgiving, the day after Thanksgiving, Christmas Day, New Year's Day and Memorial Day.

G. Preseason Meals. Preseason meals for athletic teams shall be charged to University as follows:

1. A period of one (1) hour and fifteen (15) minutes will be allotted for service of football training table meals. Additional hours of service will be charged to University at a rate of Fifty Dollars (\$50.00) per additional hour. Additionally, the preseason per athletic meals for the football team and basketball teams will not exceed the following prices:

Breakfast:	\$15.00
Lunch	\$17.00
Dinner	\$20.00

2. Training table meals throughout football season. Vendor may be requested to furnish training table meals in the Big Green Room at Joan C. Edwards Stadium. If requested:

- Evening meals will be provided Monday – Wednesday and on other days as mutually agreed upon.
- Coaches, staff and players not participating in a meal plan will be billed per meal at the prevailing guest meal rate, in accordance with Exhibit B, Section E above.
- Proposed new pricing is based on menus that remain within the parameters of meals provided in previous years.
- Menus will duplicate the Harless cafeteria menu unless otherwise mutually agreed upon. Any change in the menu, service type or hours of service will result in additional charges.
- A roster of players (along with MU ID number) on meal plans as well as any other eligible participants must be provided prior to any meals being served.
- Guarantees for the upcoming week must be provided no later than each Friday.
- Any cancellations must be made no later than twenty four (24) hours in advance.
- Paper products will be purchased by Vendor and billed in bulk to the University’s Athletic Department. Copies of invoices for purchase of these products attached to the purchase order will be sent to the University’s Athletic Department for auditing purposes.

Evening Meals (labor allotted 1.5 hours)	\$307.15
Training Table (additional Hours over 1.5)	\$51.50
Non-Retail Markup	6.00%

When Breakfast includes an omelet station the price will be Eighteen and 75/100 Dollars (\$18.75) per athletic meal

An additional charge of Fifty Dollars (\$50.00) would apply for chef services for the omelet station.

H. Summer Camp/Conference Rates. For University sponsored and third party summer camps and conferences, Vendor shall provide Food Service at mutually agreed upon times and rates.

EXHIBIT C pg. 1 of 7
RFP/ADDENDUMS/PROPOSAL

Except as set forth in Section 1.1, this Agreement, including University's Request for Proposal, dated December 6, 2017 ("RFP") and Vendor's Proposal, dated March 14, 2018 ("Proposal") contains all the agreements of the parties with respect to matters covered herein, superseding any prior agreement and all other contractual commitments and/or documentation. Any exhibits referred to herein are made a part of this Agreement by reference; however, in the event of a conflict between the terms of such exhibit or any other document incorporated herein and the terms of this Agreement, the terms of this Agreement shall govern unless an exhibit or other incorporated document expressly states that the exhibit or incorporated document (or a provision of the exhibit or incorporated document) supersedes the conflicting provision contained in this Agreement.

Request for Proposal (RFP) and Vendor's Proposal are incorporated by reference

Marshall University RFP (Total of 139 pages)

RFP and Supplemental Instructions (Total of 48 pages)

Appendices A through T (Total of 59 pages)

Three (3) RFP Addenda (Total of 32 pages)

Addendum #1 (Total of 27 pages)

Addendum #2 (Total of 3 pages)

Addendum #3 (Total of 2 pages)

Vendor's Proposal (Total of 360 pages)

Table of Contents – Conceptual Proposal (Total of 288 pages)

Table of Contents – Financial Proposal (Total of 72 pages)

In the event of a conflict among this Agreement, the RFP and Proposer's Response, the following order of precedence shall apply:

- A. This Agreement and its Exhibits
- B. RFP
- C. Vendor's Proposal

EXHIBIT D pg. 1 of 9

APPROVED Legal Exceptions / Approved Language Requests

Sodexo America, LLC ("Proposer") has reviewed the Request for Proposal ("RFP") for Food Services for Marshall University ("University") and is submitting its Proposal conditioned upon the incorporation of the following modifications:

1. Proposer requests clarification of the first paragraph under "Instructions for Submitting A Proposal" on page 7:

Original Text: "By making a proposal, the Proposer warrants that: a) The Proposer has read and understand the RFP documents, instructions, terms and conditions; b) That the proposal is made in accordance therewith; and c) The proposal is based upon the materials, equipment, systems, printing and/or services specified"

Proposer requests clarification of the above original text, in that Proposer, by submitting its proposal agrees to all terms and conditions as modified by Proposer's proposal and as mutually agreed upon by the parties.

University Response: No Change

2. Proposer requests deletion of "Best Price Guarantee", page 2 of the RFP Supplemental Package in its entirety:

Original Text: "Best Price Guarantee. The awarded proposer agrees to provide pricing to the University and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. The awarded proposer agrees to lower the cost of any product purchased following a reduction in the manufacturer or publisher's direct cost."

Proposer requests deletion of the above original text, in its entirety, in that in the Food Service industry it is difficult to guarantee the lowest prices possible to a customer in an industry in which a supplier (i) controls pricing and (ii) has the ability to compare one single item sold to Customer A to the same single item sold to Customer B, and then Customer C and so on; thereby always ensuring which customer receives the best price. A Food Service financial arrangement is not established based on the comparison of one single item sold to a customer but rather it is calculated based on multiple variables which include: (i) the purchase of food, beverages and supplies from third party vendors and distributors each of whom control pricing, (ii) labor costs which vary by geographic location, (iii) standards and specifications required by individual customers and (iv) investments made at a customer's location. Collectively these variables are factored into the Food Service financial arrangement and make it difficult to compare one Food Service operation to another Food Service operation.

University Response: Page 2 of the RFP Supplemental Package Best Price Guarantee language is. Deleted and replaced as follows:

Daily rates for meal plans are mutually agreed on an annual basis and remain in place for the contractual year. Meal plan options are proposed by November to be approved by the University and Board of Governors.

3. Proposer requests clarification of “Contract Provisions”, page 5 of the RFP Supplemental Package:

Original Text: “Contract Provisions. After the successful Proposer is selected, a formal contract document will be executed between Marshall University and Proposer. In addition, the RFP and the Proposer’s response will be included as part of the contract by reference. The order of precedence is the contract, the RFP and the Proposer’s bid in response to the RFP.”

Proposer requests clarification of the above original text, in the event of any conflict or inconsistency in the provisions of the RFP, Proposer’s Proposal, and the resulting Agreement, the following order of precedence shall apply:

1. Final negotiated Agreement between the parties
2. Proposer’s Proposal
3. RFP

University’s Response: No Change

4. Proposer requests clarification of “Contract Termination”, page 5 of the RFP Supplemental Package:

Original Text: Contract Termination. Marshall University may terminate any contract resulting from this RFP immediately at any time the Proposer fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. Marshall University shall provide the Proposer with advance notice of performance conditions which are endangering the contract’s continuation. If after such notice the Proposer fails to remedy the conditions contained in the notice, within the time period contained in the notice, Marshall shall issue the Proposer an order to cease any and all work immediately. Marshall shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

Marshall shall have the right to terminate the contract upon thirty (30) days written notice to Proposer.

Proposer requests clarification of the above original text, in that such termination rights also be granted to Proposer, and therefore request that the following shall apply to termination of the resulting agreement:

“If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within ten (10) days in the case of failure to make payment when due or thirty (30) days in the case of any other Cause, the notice shall be null and void. If such Cause is not remedied within the specific period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights of termination referred to in the Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.”

“Either party may terminate this Agreement, in whole or in part, at any time, without Cause, upon no less than thirty (30) days' prior written notice to the other party.”

In addition, Proposer requests the above termination language, for Cause and without Cause, also be included on the “Life of Contract” page, page 33 of the RFP, and the Agreement Addendums MU-96 and/or MU-96A.

Furthermore, Proposer requests clarification of the last sentence of the first paragraph above in the original text, in that Proposer expects to be compensated for all services rendered by Proposer through its final day of operation.

University's Response: Page 5 of the RFP Supplemental Package Contract Termination and Page 33 of the RFP are changed as follows:

Contract Termination. Marshall University may terminate any contract resulting from this RFP immediately at any time the Proposer fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. Marshall University shall provide the Proposer with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Proposer fails to remedy the conditions contained in the notice, within the time period contained in the notice, Marshall shall issue the Proposer an order to cease any and all work immediately. Marshall shall be obligated only for services rendered and accepted prior to the date of the notice of termination. Proposer will be compensated for all services rendered by Proposer through its final day of operation.

If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within ten (10) days in the case of failure to make payment when due or thirty (30) days in the case of any other Cause, the notice shall be null and void. If such Cause is not remedied within the specific period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights of termination referred to in the Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.”

Either party may terminate this Agreement, in whole or in part, at any time, without Cause, upon no less than thirty (30) days' prior written notice to the other party.

5. Proposer requests a clarification and a modification of “Compliance with Laws and Regulations”, page 6 of the RFP Supplemental Package:

Original Text: “The proposer shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body. The Proposer shall pay any applicable sales, use or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the contractor. The State of West Virginia and the University are exempt from any taxes regarding the goods and/or

services and under no circumstances shall either be held liable for any obligation of the same.

Proposer agrees with the above original text, with the understanding that the intent of such obligations are limited to the scope of services provided by Proposer. In addition, Proposer requests modification of the last sentence as follows:

“To the extent that the State of West Virginia and the University are exempt from any taxes regarding the goods and/or services then the State of West Virginia and the University shall not be held liable for any obligation of the same; however, if a State or local taxing jurisdiction deems the services under this contact to be taxable, then University shall reimburse Proposer for such assessment and any interest and penalties related to such assessment upon receipt of an invoice from Proposer; except the State of West Virginia and the University shall not be responsible for any assessment attributable to Proposer’s negligent failure to timely submit any known tax filing or report.”

University’s Response: Page 6 of the RFP Supplemental Package Compliance with Laws and Regulations is modified as follows:

Original Text: “The proposer shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body. The Proposer shall pay any applicable sales, use or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the contractor. The State of West Virginia and the University are exempt from any taxes regarding the goods and/or services and under no circumstances shall either be held liable for any obligation of the same.”

If additional sales or use taxes are assessed against the Services, Marshall University shall pay such tax assessment and related interest upon receipt of an invoice from Proposer; except that Marshall University shall not be responsible for any assessment attributable to Proposer’s negligent failure to timely submit any known tax filing or report. Proposer shall be responsible for the city, state or federal income taxes from its operations hereunder. This provision shall survive termination of this Agreement.”

In addition, Proposer will bill and collect sales taxes, if applicable, on all meals and services provided to Marshall University.”

6. Proposer requests modification of “Indemnification”, pages 6-7 of the RFP Supplemental Package:

Original Text: “The Proposer agrees to indemnify, defend and hold harmless, Marshall University and its officers and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Proposer, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery,

performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or

regulations; and (3) Any failure of the Proposer, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.”

Proposer requests modification of the above original text as follows:

“The Proposer agrees to indemnify, defend and hold harmless, Marshall University and its officers and employees from and against: (1) Any **third party** claims or losses resulting to any person or entity injured or damaged **solely by the negligent acts of** the Proposer, its officers, employees, or subcontractors **in the provision of services under this contract, or** by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (2) Any failure of the Proposer, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.”

University’s Response: Pages 6-7 of the RFP Supplemental Package, Indemnification paragraph is modified as follows:

The Proposer agrees to indemnify, defend and hold harmless, Marshall University and its officers and employees from and against: (1) Any third party claims or losses arising in the course of services rendered by Proposer or any of Proposer’s subcontractors, persons or firms performing or supplying services, materials or supplies in connection with the performance of the contract; (2) Any third party claims or losses resulting to any person or entity injured or damaged by the Proposer, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (3) Any failure of the Proposer, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws. Notwithstanding the foregoing, Proposer shall have no obligation to indemnify, defend, or hold harmless Marshall University for supplies or services provided by subcontractors, persons or firms who are not Proposer Approved Vendors, nor shall Proposer have any obligation to indemnify, defend or hold harmless Marshall University for claims or losses arising from the actions or omissions of the officers or employees of Marshall University. Marshall University shall remain responsible for claims arising from the actions and omissions of its officers and employees.

Subject to Proposer’s aforementioned indemnification obligation, and to the extent Proposer agrees to defend and indemnify Marshall University without reservation, Proposer will select counsel, control defense and settlement negotiations of any such claim. Should Proposer agree to a defense or defense and indemnity of Marshall University with reservation, Marshall University may select counsel to defend and represent their interests with expectation of Proposer’s reimbursement of all reasonable costs and fees proportionate to Proposer’s negligence or fault as determined by a court of competent jurisdiction. In the event that Marshall University, its officers or employees are found to be negligent and its negligence contributed to or caused the claim or loss, Marshall University shall promptly reimburse Proposer proportionately for costs, expenses and payments made pursuant to the aforementioned indemnification.

7. Proposer requests inclusion of the following provisions to "Record Retention (Access & Confidentiality)", page 7 of the RFP Supplemental Package:

Original Text: Record Retention (Access & Confidentiality). Proposer shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Proposer. The Proposer shall maintain such records a minimum of five (5) years and make available all records to Marshall Personnel at Proposer's location during normal business hours upon written request by Marshall within 10 days after receipt of the request.

Proposer may have access to private and confidential data maintained by Marshall University to the extent required for Proposer to carry out the duties and responsibilities defined in this contract. Proposer agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless Marshall University against any and all claims brought by any party attributed to actions of breach of confidentiality by the Proposer, subcontractors or individuals permitted access by Proposer.

Proposer seeks protection of its trade secrets, proprietary and other commercially sensitive information and requests to add the following provisions as new paragraphs at the end of the above original text as follows:

"Proposer Trade Secrets and Proprietary Rights.

A. During the term of this Agreement, Proposer may grant to University a nonexclusive right to access certain proprietary materials of Proposer, including menus, signage, Services survey forms, software (both owned by and licensed to Proposer), and similar items regularly used in Proposer's business operations ("Proprietary Materials"). In addition, University may have access to certain non-public information of Proposer, including, but not limited to, recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, surveys and studies, and similar compilations regularly used in Proposer's business operations ("Trade Secrets"). Trade Secrets shall not include (i) any information which at the time of disclosure or discovery or thereafter is generally available to and known by the public or the relevant industry (other than as a result of a disclosure directly or indirectly by University), or (ii) any information which was available to University on a non-confidential basis from a source other than Proposer, provided that such source was not bound by an agreement prohibiting the transmission of such information, or (iii) any information independently developed or previously known without reference to any information provided by Proposer.

B. University shall not disseminate any Proprietary Materials or disclose any of Proposer's Trade Secrets, directly or indirectly, during or after the term of this Agreement. University shall not photocopy or otherwise duplicate any such material without the prior written consent of Proposer. All Trade Secrets and Proprietary Materials, including signage, service marks and trademarks, shall remain the exclusive property of Proposer and shall be returned to Proposer immediately upon termination or expiration of this Agreement.

C. Without limiting the foregoing, University specifically agrees that all software associated with the operation of the Services, including without limitation, menu

systems, food production systems, accounting systems, and other software, is owned by or licensed to Proposer and Not University. Furthermore, University's access or use of such software shall not create any right, title, interest, or copyright in such software, and University shall not retain such software beyond the termination of this Agreement. Data processed by the software shall remain the property of Proposer; however, at University's request, upon termination or expiration of this Agreement Proposer shall provide University with a copy of the data processed by such software in a format to be mutually agreed upon by the Parties.

D. The provisions set forth in this Section shall survive termination or expiration of this Agreement. In the event of any breach of the provisions set forth herein, Proposer shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available."

University's Response: Page 7 of the RFP Supplemental Package "Record Retention (Access & Confidentiality): Add the above language

8. Proposer requests clarification of "Payment Methods", page 8 of the RFP Supplemental Package:

Original Text:

The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Proposer must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Proposer is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

Proposer requests clarification of the above original text, in that Proposer shall continue to accept University's Purchasing Card for payment for all orders, except for resident board bills and summer camps. This clarification aligns with the current practice in place under the University's agreement with Proposer.

University's Response: Page 8 of the RFP Supplemental Package Payment Methods: Proposer shall continue to accept University's Purchasing Card for payment for all orders, except for resident board bills and summer camps.

9. Proposer requests deletion of "Intellectual Property", page 2 of the MU-96 Agreement Addendum, in its entirety:

Original Text:

"Intellectual Property. Marshall will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for Marshall to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to Marshall to the extent such intellectual property terms to apply to subcontractors.

Proposer requests deletion of the above original text, in that such provision is not applicable to the scope of services being provided by Proposer, as University requires Proposer to manage and operate its Food Service, not create intellectual property for University.

**University's Response: Page 2 of the MU-96 Agreement "Intellectual Property"
Delete in its entirety:**

10. Proposer requests the following provisions be included in the resultant Contract:

University's Response: Add the following provisions:

Condition of Premises and Equipment. The Premises and equipment provided by University for use in the Services operation shall be in good condition and maintained by University to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health (including, without limitation, OSHA regulations). Any modifications or alterations to the workplace or the Premises (whether structural or non-structural) necessary to comply with any statute or governmental regulation shall be the responsibility of University and shall be at the University's expense. University agrees to be responsible for any liability or assessment, including related interest and penalties, arising from University's breach of the aforementioned obligations, and University shall pay reasonable collection expenses, attorneys' fees and court costs incurred in connection with the enforcement of such responsibility. The foregoing provisions shall survive the termination of this Agreement."

Change in Conditions and/or Service Requirements.

A. **Conditions.** The financial terms set forth in this Agreement and other obligations assumed by Proposer hereunder are based on conditions in existence on the date Proposer commences operations, including by way of example, assumptions listed under Proposer's Proposal; utilization of Proposer's procurement program; University's student population; labor; food and supply costs and Charges; applicable taxes; applicable laws; the scope of Services; University's policies and practices; and terms of University's and/or Proposer's collective bargaining agreement(s), if any. In addition, Proposer has relied on representations regarding existing and future conditions made by University in connection with the negotiation of this Agreement. In the event of a change in the conditions or the inaccuracy of any representation made by University, the financial terms and other obligations assumed by Proposer hereunder shall be renegotiated on a mutually agreeable basis to reflect such change or inaccuracy.

The initial revenue proposed will remain in effect unless a catastrophic event occurred beyond the control/capability of Sodexo or the University. In the event, of the catastrophe the terms may be considered for review.

Sodexo will work in concert with Marshall University to find agreeable solutions.

B. **Service Requirements.** If University (i) requires expansion of or reduction in the scope of Services, (ii) changes the use of Proposer's procurement program and/or (iii) requests (a) any change in the use of disposables (i.e., from non-biodegradable products to

biodegradable products); (b) use of specialty products (e.g., use of locally produced products or supplies, organic products, etc.); or (c) additional management/resource personnel to conduct a specific function unrelated to the Services, and such change or request results in an increase or decrease in costs, Charges or expenses to Proposer, Proposer's compensation shall be adjusted by an amount equal to the projected change in costs, Charges or expenses plus a mutually agreed upon amount for contribution to supporting overhead and profit from the date at which the change or request took effect."

Any proposed changes/expense cost must be mutually agreed upon with mutually agreed upon effective date.

Purchasing/Non-Proposer Approved Vendors.

University acknowledges that Proposer shall utilize its own supplier network for the provision of food, beverages, supplies and services in the performance of its obligations hereunder. University understands that Proposer has entered into agreements with many vendors and suppliers of products and services which (i) give Proposer the right to inspect such vendors' and suppliers' plants and/or storage facilities and (ii) require such vendors and suppliers to adhere to standards to ensure the quality of the products and/or services purchased by Proposer for or on behalf of University. Notwithstanding the foregoing, University may direct Proposer to use products and/or services from non-Proposer approved vendors. In such instances for the mutual protection of University and Proposer and as required by Proposer of its vendors, University agrees that each such vendor adhere to quality, pricing, liability and fair labor practices and shall sign an indemnity waiver and meet Proposer's insurance requirements.

Vendor and University will discuss occasional requests to use special vendors (i.e. - such as a sponsor for Athletics or adhering to the University's beverage pouring rights agreement).

Exhibit E pg. 1 of 1
EXPECTATIONS SESSIONS

Expectations Sessions

Expectations Sessions are **annual** meetings requiring the attendance of all key stakeholders who have an interest in the Services under this Agreement. Expectation Sessions shall be held regularly throughout the contract term with at least one per contract year.

Objectives:

1. Vendor shall share customer/University satisfaction results, financial performance, successes and challenges from the previous year.
2. University expectations from the previous session shall be reviewed and expectations moving forward shall be established.
3. Once Vendor has identified the current University expectations, Vendor shall develop a proposed plan of initiatives, strategies and innovations for the upcoming year. This plan ensures that Vendor is aligning its service delivery with the expectations of University.

Participants:

The parties shall mutually agree upon the participants for each Expectations Session.

Exhibit F pg. 1 of 1
Smallwares and Expendable Equipment Inventory

Such inventory shall be taken within thirty (30) days after the Commencement Date of this Agreement.

STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

State Agency, Board, or Commission (the "State"): *Marshall University*
Vendor: *Sodexo America LLC*
Contract/Lease Number ("Contract"): *MU20Dining*
Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.

2. **PAYMENT** — Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** — Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** — The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

Notwithstanding the foregoing, Vendor shall be reimbursed for the unamortized portion of each investment provided to Marshall University on the expiration date or within five (5) days after receipt by either party of any notice of termination.

5. **DISPUTES** — Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** — Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** — Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** — Any language limiting the Vendor's liability for direct damages to person ~~or property~~ is deleted. *Notwithstanding the foregoing, to the extent a property loss is caused by Vendor's sole negligence and not exacerbated by factors beyond Vendor's control (including, but not limited to, improper activation of the fire suppression system or failure of the fire department to respond), Vendor's total aggregate liability for loss or damage during the Term of the Agreement to the buildings, equipment, improvements, and other property owned by University is limited to a maximum of Four Hundred Thousand Dollars (\$400,000.00). In addition, in no event shall either party be liable for consequential, indirect or incidental*

damages (including punitive damages and lost profits), even if such party has been advised of the possibility of such damages in advance.

- 10. **TAXES** — Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
- 11. **NO WAIVER** — Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.
- 12. **STATUTE OF LIMITATIONS** — Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** -- The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** — Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** - Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** — Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** — All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** — Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE** — If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** — The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and strikethrough for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: Marshall University
 By: *Angela White-Negley*
Angela White Negley (Aug 23, 2019)
 Printed Name: Angela White-Negley
 Title: Director of Purchasing /CPO
 Date: Aug 23, 2019

Sodexo America, LLC
 Vendor: _____
 By: *Cal Thetford*
Cal Thetford (Aug 20, 2019)
 Printed Name: Cal Thetford
 Title: Senior Vice President
 Date: Aug 20, 2019

Approved as to form prior to acknowledgment thereof

this 19th day of Aug, 2019

Patrick Morrissey, Attorney General

By: *[Signature]*