



THE TEXAS A&M UNIVERSITY SYSTEM

DINING SERVICES AGREEMENT

This Dining Services Agreement (“Agreement”) is made as of August 3, 2012 (the “Effective Date”), by and between Texas A&M University, a member of The Texas A&M University System an agency of the state of Texas, with principal offices located College Station, Texas (“Texas A&M”), and Compass Group USA, Inc., a Delaware corporation, with principal offices at 2400 Yorkmont Road, Charlotte, North Carolina 28217, by and through its Chartwells Division (“Chartwells”) (individually, the “Party” and collectively, the “Parties”). Chartwells and Texas A&M agree as follows:

1. GENERAL SCOPE OF SERVICES

1.1 **Contract Documents.** Chartwells will furnish all management, operations, labor, equipment, goods, and supplies necessary to provide professional food service operations at Texas A&M University (the “Dining Services”) in the manner described in this Agreement, and the other documents listed below (“Contract Documents”), listed in order of precedence and incorporated herein:

- (a) This Dining Services Agreement
- (b) RFP01 OGC-12-007 *Operation and Management of Campus Dining Services*, including all addenda and responses to written questions
- (c) Chartwells’ Proposal submitted in response to RFP01 OGC-12-007, including all subsequently submitted addenda, clarifications, revised offers and responses to questions

2. EXCLUSIVE RIGHTS, PREMESIS, AND EXCEPTIONS

2.1 **Exclusivity.** Texas A&M grants to Chartwells, as an independent contractor, the exclusive right to provide and manage Texas A&M’s dining service program (“Services,” “Food Service” or “Food Service Program”) on the campus of Texas A&M (the “Premises”) and the exclusive right to sell to students, employees, guests and other persons at such Premises food products, non-alcoholic beverages and other such articles (“Products”) as shall be approved by Texas A&M subject to the terms of this Agreement. Chartwells shall render the Food Services within the facilities of the Premises, including but not limited to, the food preparation, serving, dining and storage areas (“Facilities” or “Food Service Areas”) designated for the Food Service Program.

2.2 **Premises.** All Facilities subject to the exclusive operating rights granted to Chartwells under this Agreement are listed in Exhibit A – Dining Services Facilities, attached and made a part hereof. In the event Texas A&M designates, constructs, or adds additional dining service operations and facilities (excluding concessions at athletic facilities vending and convenience stores, if not already managed by Chartwells), Chartwells shall be granted the first right to operate such operations and facilities.

2.3 **Exceptions.** The exclusive operating rights granted to Chartwells under this Agreement specifically exclude comprehensive food service at all Texas A&M athletic events conducted at various Texas A&M facilities, the Texas A&M golf course clubhouse and Starbucks, currently operated by Barnes and Noble, it being agreed that neither declining balance funds nor meal plan swipes will be accepted for payment at Starbucks.

2.4 **Fund Raising Efforts.** Texas A&M and Chartwells agree that Texas A&M may authorize the sale of food and beverage products by persons other than Chartwells outside any of the facilities listed in Exhibit A in connection with the fund raising efforts of Texas A&M affiliated student, faculty or community organizations, provided that the food storage and food preparation areas of the facilities listed in Exhibit A may not be utilized by persons other than Chartwells.

3. **TERM**

3.1 **Term.** This Agreement shall commence on the Effective Date and shall terminate on the expiration of ten (10) years from the Effective Date (the “Initial Term”), unless terminated earlier as provided in Article 18. This Agreement may be renewed by Texas A&M for an additional two (2) year period (“Renewal Term”) with written notice to Chartwells not less than 180 days before the end of the Initial Term. The Initial Term and the Renewal Term are referred to collectively as the “Term.”

4. **CHARTWELLS' RESPONSIBILITIES**

4.1 **Management and Personnel**

- 4.1.1 **Staffing Plan.** Chartwells shall develop a staffing plan, to be approved by Texas A&M, for the provision of the Services. At a minimum, the plan shall require Chartwells to:
- a. Maintain a staff of properly trained and experienced personnel to ensure consistent, efficient and satisfactory performance of the Services;
 - b. Assign an adequate number of personnel to ensure consistent, efficient and satisfactory performance of the Services; and
 - c. Provide sufficient back-up personnel in times of staff shortages due to vacations, illness, emergencies, and inclement weather, to ensure consistent, efficient and satisfactory performance of the Services.

4.1.2 Employee Transition

- a. Chartwells shall offer, immediately prior to the Effective Date, each Texas A&M dining services employee as of the Effective Date (“Transition Employee”) a position at not less than his or her current salary (“Current Salary”), seniority and employment status (full-time, part-time) based on initial terms and conditions of employment that are established by Chartwells and approved by Texas A&M; provided that such Transition Employee files for employment with Chartwells on or before the Effective Date of this Agreement. Chartwells’ hiring of the Transition Employees will be contingent on the employees passing all required background checks (including eVerify) which will be performed within fourteen (14) days of the Effective Date such that all Transition Employees shall transition to Chartwells immediately. Chartwells shall retain each Transition Employee in that position (subject to any promotions) throughout the Term of this Agreement (including any renewals or extensions) as long as the Transition Employee wishes to remain employed, provided that such Transition Employee has performed the responsibilities of his/her position at a level that merits continuation in his/her position, complies with Chartwells policies and procedures, and is not required by Texas A&M to be dismissed or reassigned under Section 4.1.7 (d) of this Agreement. Nothing in this section is intended to grant any rights to any party other than Chartwells and Texas A&M.
- b. With respect to the Transition Employees who were on Texas A&M’s payroll prior to the Effective Date who are hired by Chartwells, Texas A&M shall assume all liability for all claims, costs, or other liabilities, including workers’ compensation claims or grievances arising from incidents occurring prior to the Effective Date and all accrued benefits such as vacation time, sick time over 80 hours, personal time, and any other paid time off, severance, and pension benefits associated with each Transition Employee arising prior to the Effective Date.
- c. Chartwells will make its standard benefits package available at its standard benefits costs to the Transition Employees hired by Chartwells, provided that Chartwells will bridge benefits to Transition Employees as described below. Subject to Sections 4.1.2(d) and (e) below, Chartwells will provide a benefits credit to the Transition Employees to help defray some or all of the additional out-of-pocket premium costs, if any, the employee will incur by receiving medical, dental and vision benefits through Chartwells. This benefits credit will not account for any other out-of-pocket costs incurred by the employee, including, but not limited to, deductibles or out of pocket costs for prescription drugs.
- d. A Transition Employee will only be entitled to receive a bridge benefits credit for a medical, dental and vision plan that is comparable to the medical, dental and/or vision plan the employee had prior to the Effective Date. For the purpose of calculating benefits credits, the term “comparable” shall mean benefits that are comparable in terms of the number of individuals covered by those benefits. By way of example, and not limitation: an eligible employee receiving “employee only” benefits from Texas A&M would be entitled to a benefits credit for additional out of pocket premium costs the employee would incur by electing an “employee only” plan options; an employee receiving “employee + 1” benefits from Texas A&M would be entitled to a benefits credit for additional out of pocket premium costs the employee would incur by electing

- to receive an “employee + 1” plan options ; and an employee receiving “employee + 2 or more” benefits from Texas A&M would be entitled to a benefits credit for additional out of pocket premium costs the employee would incur by electing to receive an “employee + 2 or more” plan option.
- e. The benefits credit from Chartwells will only apply to individuals hired by Chartwells who were (1) employed by Texas A&M in the dining services department immediately prior to the Effective Date; (2) who received medical, dental and/or vision insurance through Texas A&M’s benefits program; and (3) who elect to receive medical, dental and/or vision insurance from Chartwells. Employees whose out of pocket premium costs would be lower through their election of insurance plan(s) than their previous out of pocket medical, dental and/or vision insurance premiums with Texas A&M will not be entitled to any benefits credits.
 - f. All Transition Employees will be entitled to receive medical, dental and vision benefits from their first day of employment with Chartwells. Chartwells will recognize the Transition Employees’ hire date by Texas A&M for the purpose of determining each employee’s eligibility for benefits and retirement vesting from Chartwells. Chartwells shall provide each Transition Employee with an immediate one-time 4% increase to their Current Salary with an option to invest that increase in the Chartwells retirement program.
 - g. Chartwells shall credit each Transition Employee with an amount of sick leave equal to his or her Texas A&M sick leave balance as of the Effective Date, up to 80 hours. Such credited sick leave shall not be due upon such employee’s departure from Chartwells, but shall lapse upon such departure. Chartwells shall grant each Transition Employee sick and vacation leave accrual amounts according to the schedule in effect for Texas A&M’s own employees on the Effective Date.
 - h. Chartwells agrees to provide 20,000 hours in a sick leave pool for up to 24 months for all Transition Employees. Compass and TAMU will develop an appropriate process and approval methodology to allow the Transition Employees to request sick leave for catastrophic sick leave needs. Compass will then bill TAMU for the salary and associated benefits of the Transition Employees granted leave from the sick leave pool, for the period of the sick leave pool absence.
 - i. At Texas A&M’s request, Chartwells shall permit any Transition Employee who is two years or less from being eligible for Teacher Retirement System (“TRS”) retirement as of the Effective Date (“Retained Employee”) to remain an employee of Texas A&M rather than Chartwells. Until the Retained Employee achieves TRS retirement criteria, Texas A&M shall assign Retained Employees to Chartwells for the provision of the Services and Chartwells shall provide payment to Texas A&M for the salary and benefit costs (with respect to TRS retirement contributions, Compass Group’s aggregate reimbursement to Texas A&M under this Agreement, and separate agreements for building maintenance services under RFP01 OGC-12-010, custodial services under RFP01 OGC-12-009, and landscape maintenance services under RFP01 OGC-12-08 shall not exceed \$80,000 per year, and such reimbursement obligation shall expire on the second anniversary of the Effective Date) of such Retained Employees. Chartwells shall hire Retained Employees upon their departure from employment with Texas A&M, provided that such Retained Employee has performed the responsibilities of his/her position at a level that merits

- continuation in his/her position and that such Retained Employee passes all required background checks (including eVerify); and, provided however, such Retained Employees shall not retain their service credits nor receive bridging of their medical, dental or vision benefits upon hire by Chartwells. Such departure would correspond to the Retained Employee achieving TRS retirement criteria. Once a Retained Employee departs from employment with Texas A&M the payment to Texas A&M shall be reduced to reflect such departure of the Retained Employee.
- j. Texas A&M shall be solely responsible, shall timely report and pay all liabilities and amounts due to the Texas Retirement System for the employment after retirement pension surcharge for employment of working retirees under the Texas Administrative Code and regulations thereunder (see 34 Texas Administrative Code Rule 31.41).

4.1.3 Roster.

- a. Each individual who is assigned to perform the Services under this Agreement will be an employee of Chartwells (including Transition Employees); a Retained Employee, or an employee of a permitted subcontractor engaged by Chartwells. Chartwells is responsible for the performance of all individuals performing the Services under this Agreement. Within fourteen (14) days after commencing the Services, Chartwells shall: (1) provide Texas A&M with a roster of every individual who may be assigned to perform the Services (“Roster”), and (2) perform appropriate criminal background and sex offender screenings on all those individuals (excluding Retained Employees). Chartwells shall determine on a case-by-case basis whether each individual assigned to perform the Services meets the screening requirements and restrictions of Chartwells. The foregoing must be applied in accordance with federal, state and local law and the U.S. Equal Employment Opportunity Commission Guidelines.
- b. Chartwells shall provide to Texas A&M an electronic report that identifies newly terminated or hired employees at the end of each work day on which employees are hired or terminated, including an indicator identifying working retirees (“Daily Report”). Chartwells shall also provide an updated Quarterly Roster (“Quarterly Roster”) which reflects all employee changes from the previous quarter. The Quarterly Roster shall include an indicator identifying all working retirees of the Texas Retirement System. Prior to commencing performance of the Services, Chartwells shall provide Texas A&M a letter signed by an authorized representative of Chartwells certifying compliance with this Section 4.1.3. Chartwells shall provide Texas A&M an updated certification letter with each Quarterly Roster.

4.1.4 Specialized Services. Chartwells will provide qualified personnel who shall be responsible for specialized services such as administrative, management, dietetic, purchasing, equipment and related services

4.1.5 Staff Availability. Chartwells will ensure that management level staff shall be available to Texas A&M officials, on-site and at the district, regional and corporate levels, to respond to University telephone calls or other communications in a timely and responsive manner.

4.1.6. Uniforms. Chartwells will supply uniforms (which must be approved by Texas A&M) for Chartwells employees and shall enforce appropriate grooming, hygiene, dress, and conduct codes for all its personnel who report to work at or who conduct business on Texas A&M premises.

4.1.7 Senior Management.

a. Chartwells will provide senior management and other supervisory personnel who shall be responsible for the performance of the Services. These personnel shall include, but will not be limited to the following (each a “Senior Level Manager”):

- i. Resident District Manager
- ii. Senior Executive Chef
- iii. Catering Director
- iv. Controller
- v. Retail Manager
- vi. Resident Dining Manager
- vii. Director of Operations (2 positions)
- viii. Marketing Director

b. Chartwells agrees that the Resident District Manager, Catering Director, Retail Manager and Executive Chef must be approved by Texas A&M in advance, and such approval shall not be unreasonably withheld.

c. Chartwells will not transfer or reassign to a customer of Chartwells other than Texas A&M any Senior Level Manager providing services to Texas A&M within two (2) years of such employee’s initial transfer or assignment to Chartwells’ Texas A&M account without Texas A&M’s prior written approval.

d. Texas A&M, at its sole discretion, may require Chartwells to remove Chartwells employees from service at Texas A&M and require that they be dismissed or reassigned to another Chartwells customer if, in the opinion of Texas A&M, the employee is not adding appropriate value to services being delivered by Chartwells or hinders effective delivery of Chartwells services, except as prohibited by applicable law.

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

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

4.1.10 Special Programs

- a. Chartwells shall provide not less than \$5,000 per year to Texas A&M in book scholarships at Texas A&M University for dependents of Chartwells employees who provide the Services.
- b. Chartwells shall implement an educational release time program similar to that of Texas A&M pursuant to TAMU SAP 31.99.01.M0.01.
- c. Chartwells shall provide work study, internship, and management training opportunities to Texas A&M University students to include convenient working locations and flexible work hours.
- d. Chartwells shall implement programs to provide employment opportunities for the disabled and shall continue Texas A&M's programs with Junction 505, Texas Industries for the Blind and Handicapped, and the Bryan ISD L.I.F.E. program.
- e. Chartwells employees shall be eligible to purchase Texas A&M Student Recreation Center memberships at the Texas A&M faculty/staff discount rate at no cost to Chartwells.

4.1.11 Rules and Regulations. Chartwells agrees that its employees and subcontractors or agents with whom Chartwells has a direct contractual relationship ("Direct Subcontractors") shall comply with and observe all applicable policies, regulations, rules and procedures of Texas A&M and The Texas A&M University System concerning conduct on the Premises that Texas A&M imposes upon Texas A&M's employees and agents.

4.1.12 Employee Dishonesty. Chartwells shall provide evidence that Chartwells has in place a method by which Chartwells shall indemnify Texas A&M and its employees, students, faculty, and guests from any pecuniary loss that may be sustained as a result of any act of fraud, dishonesty, forgery, theft, embezzlement, or misappropriation on the part of Chartwells or any of its employees or Direct Subcontractors.

4.2 **Training**. As more particularly described in the Contract Documents, Chartwells shall be responsible for all food handling training, safety training, development programs and other training for any Chartwells employees (including but not limited to Retained Employees), supervisors, managers or other personnel as may be necessary in connection with the provision of Services. All the content and timing of all training programs to be provided by Chartwells shall be provided to Texas A&M prior to implementation for comment and approval.

4.3 **Sanitation and Compliance**

4.3.1 Chartwells shall comply with all applicable federal, state and local laws, regulations, ordinances and codes, including without limitation all licensing requirements and regulations with respect to food handling, and shall obtain all licenses, permits and approvals necessary for the performance of the Services. Chartwells shall also monitor its employees to ensure that each employee complies with each of the above requirements, is free of food-borne communicable diseases and routinely practices good hygiene, including hand washing. The Facilities, Services

and food prepared by Chartwells will at all times be subject to inspection by an authorized, capable person or persons designated by Texas A&M.

4.3.2 Chartwells shall maintain high standards of sanitation, housekeeping, food storage, and food handling in regard to all Services contemplated by this Agreement. Chartwells shall be responsible for daily cleaning and routine preventive maintenance within (and immediately adjacent to): food preparation areas, storage areas, serving and dining areas, exclusive use office space, rest rooms, and all equipment used by Chartwells. Sanitation shall comply with all requirements of the Contract Documents.

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

4.5 **Nutrition Standards.** Chartwells shall work with Texas A&M to develop a plan for the provision of nutritional information for all menu items at each Facility, with such plan to be completed within ninety (90) days of the Effective Date of this Agreement and implemented promptly thereafter. Further, Chartwells shall include in all menus healthy meal options and meal options for patrons with dietary restrictions, as further discussed in the Contract Documents.

4.6 **Branded Concepts.** Chartwells shall not contract with any third party with respect to any branded food concepts, or move, modify or discontinue any existing or future branded food concepts, without Texas A&M's prior written consent. Pricing for the branded food concepts will be comparable with regional prices for similar food concepts and all contracts with branded food concepts shall contain language requiring the use of Texas A&M's current identification card/declining balance card system or such other University Identification Card System as Texas A&M may utilize. For the purposes of this Agreement, the "University Identification Card System" shall include Texas A&M identification cards, Texas A&M debit cards, Texas A&M One Cards, or such other financial accounting card system as Texas A&M may from time to time implement.

4.7 **Exclusive Sponsorship**

4.7.1 Chartwells acknowledges that Texas A&M may from time to time enter into exclusive sponsorship, advertising, licensing, supply or similar agreements with sponsors, licensors, manufacturers and/or suppliers of various categories of products, goods or services, and that such agreements may impose upon Texas A&M certain restrictions with respect to advertising, use and sale of certain products, goods or services. Nothing set forth herein shall limit Texas A&M's right to enter into any such exclusive agreements. Chartwells further agrees that, upon reasonable written notice from Texas A&M, Chartwells shall not utilize, purchase, sell or advertise (or permit the utilization, purchase, sale or advertising) of any products, goods or

services, on or from Texas A&M premises, which may be in violation of any such exclusive agreement. Should an exclusive sponsorship agreement negatively impact food quality or costs to Chartwells, Texas A&M will negotiate with Chartwells for appropriate financial solution.

4.7.2 In acknowledgement of the preceding paragraph, Chartwells acknowledges that Texas A&M has an exclusive sponsorship, vending and pourage rights agreement with PepsiCo (“Pepsi Agreement”), which includes the exclusive sale of Pepsi products on the Texas A&M campus. In recognition of this pre-existing agreement, Chartwells shall not serve beverage products that are contrary to the terms of the Pepsi Agreement.

4.8 **Telecommunication Services.** Chartwells shall be responsible for and shall pay all expenses for telecommunication services, both voice and data, including without limitation, all equipment installation, cellular phones, radios, local service, long distance service, taxes, monthly charges, and other telecommunication expenses. Texas A&M will invoice Chartwells on a monthly basis for all telecommunication expenses incurred by Texas A&M on behalf of Chartwells.

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

4.10 **Transition.** Chartwells acknowledges that time is of the essence in assuming and performing the responsibilities hereunder and that Chartwells shall complete the transition of assuming the Services as quickly as reasonably practical. All activities related to this transition will take place with a minimum disruption to the academic and business operations of Texas A&M.

4.11 **Maintenance and Repairs.** Chartwells shall, subject to the provisions of Section 9.6 below, be responsible for all maintenance and repairs of the facilities, equipment (including Texas A&M equipment), and furnishings used by Chartwells in providing the Services, other than the structural maintenance and repairs to the buildings and building systems housing/serving the Food Service Areas to be performed by Texas A&M pursuant to Section 5.2 of this Agreement.

4.12 **Operation of Declining Balance Card System.** Chartwells shall provide the equipment and personnel necessary to interface with Texas A&M’s current identification card/declining balance card system or such other University Identification Card System as Texas A&M may utilize. The information contained on the University ID Card and/or in Chartwells database(s) or electronic systems is considered sensitive data and therefore must be protected from unauthorized use or access. Chartwells shall implement policies and procedures to protect such data.

4.13 **Preparation of Annual Plans**

4.13.1 Chartwells agrees to provide to Texas A&M an annual work plan for the operation of Services. The annual work plan for the initial contract year shall be delivered to Texas A&M within sixty (60) days after the final execution of this Agreement, and thereafter, on or before the 60th day prior to the following contract year.

4.13.2 As more particularly described in the Contract Documents, the annual work plan shall include information regarding Chartwells' anticipated operations for the following academic year, including but not limited to any proposed modification in the Services; significant personnel related issues; proposed budgets; projected revenues; proposed capitalized maintenance, repairs and improvements; proposed facility changes; proposed capitalized expenditures for construction or equipment; references to any specific events or activities not included within the Contract Documents; anticipated advertising and promotional activities; proposed purchases of equipment and furnishings; proposed branding or concept changes; proposed marketing plans; meal plans and any changes to the meal plan designs.

4.13.3 The annual work plan shall be subject to review, revision and approval by Texas A&M. Upon approval, the work plan shall constitute the operating program for the Services provided by Chartwells for the academic year immediately following plan approval. Once approved by Texas A&M no changes shall be made to the annual work plan unless agreed to in writing by Texas A&M. The foregoing notwithstanding, the Parties agree that budgets and financial projections set forth in the work plan are estimates, and actual financial results may vary.

4.14 **Acknowledgement of Outstanding Obligations**

4.14.1 Chartwells hereby acknowledges that Texas A&M has provided it with a list of numerous existing contracts relating to dining services within the Texas A&M campus which are now outstanding between Texas A&M and certain other entities (the "University Contracts") and that Texas A&M's existing obligations under the University Contracts may have a substantial effect upon the performance of the Services by Chartwells. An updated list of the University Contracts will be provided by Texas A&M to Chartwells within ten (10) days of the final execution of this Agreement.

4.14.2 Texas A&M will work with Chartwells to assign all University Contracts to Chartwells. Such assignments shall include license agreements with Chick-Fil-A, Which Wich and Panda Express. To the extent assignment of all University Contracts is not possible, Chartwells agrees that in performing the Services it shall at all times honor the provisions of the University Contracts to the extent that the University Contracts have an effect on Chartwells' activities under this Agreement and Chartwells shall not engage in any activity which may be deemed a breach or violation of any obligation of Texas A&M thereunder.

4.14.3 With respect to the Pepsi Agreement concerning sponsorship and vending, Texas A&M shall retain all rights and obligations thereunder, and Chartwells agrees to assist Texas A&M in the oversight and monitoring of the performance by Texas A&M of the obligations thereunder.

4.15 **Future Contracts.** Chartwells may from time to time enter into such future contracts and subcontracts regarding the Services as Chartwells may deem are necessary and appropriate,

provided that Chartwells shall not assign or subcontract its general management and oversight responsibilities without the express written permission of Texas A&M. Chartwells shall not enter into any multi-year contracts which may become binding upon Texas A&M without a provision permitting assumption of the contract by Texas A&M, at Texas A&M's election and sole discretion. All future subcontracts for operation of Food Service locations shall be subject to and consistent with the terms of this Agreement, including the requirement that any subcontracts with branded retail vendors shall include a provision naming Texas A&M as insured or additionally insured parties. Chartwells shall provide Texas A&M with reasonable advance notice of any proposed subcontracts described above and Chartwells must receive the express written approval of Texas A&M prior to entering into any such subcontracts. Chartwells agrees that Texas A&M may enter into a Concession Agreement with its affiliate, University Food Services, Inc., pursuant to which University Food Service, Inc. will manage sales of alcoholic beverages, provided that such Concession Agreement does not relieve Chartwells of any of its obligations under this Agreement.

4.16 **References.** Chartwells shall identify Texas A&M as a customer in all proposals to prospective customers for services similar to the Services. Chartwells authorizes Texas A&M to provide information and opinions to Chartwells' prospective customers as to Chartwells and the Services, whether favorable or unfavorable. Chartwells permanently and irrevocably waives any claims, damages, and liabilities of any kind that may result from the disclosure or release of such information and opinions by Texas A&M and its regents, officers, employers, agents, and students.

5. TEXAS A&M'S RESPONSIBILITIES

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

5.2 **Maintenance of Food Service Areas.** Texas A&M shall, at its expense, be responsible for all structural maintenance and repairs to the buildings housing the Food Service Areas which Texas A&M determines, in its sole discretion, may be necessary or appropriate. To the extent funded with the Capital Improvement Budget described in Section 9.3.1, Chartwells shall, at its expense, be responsible for all design, remodeling, construction and capital improvements within the Food Service Area. Chartwells further agrees to indemnify and hold Texas A&M harmless from any and all repair or maintenance expenses incurred by Texas A&M as a result of any intentional or negligent acts or omissions of Chartwells, its employees, agents, borrowed servants, contractors, subcontractors, or personnel.

5.3 Utilities

5.3.1 Texas A&M shall provide hot and cold water, steam, electricity, air conditioning, heat, gas and other related utility services (including related maintenance), as may be reasonably necessary for the Services and the efficient operation of the Food Service Areas. Chartwells shall pay a fixed-price amount of \$500,000.00 to Texas A&M for metered utility costs related to providing the Services in the first year of the Initial Term of this Agreement. For each following year during the Term of this Agreement, Chartwells shall pay and be responsible for 100% of the actual, documented utility costs related to dining services. As may be periodically requested by Chartwells, Texas A&M shall provide all necessary documentation to support the utility costs charged to Chartwells.

5.3.2 Chartwells shall exercise reasonable efforts to ensure conservation and efficiency in the use of the utilities and shall maintain utility consumption at a level generally consistent with Texas A&M's historic levels of utility usage. Texas A&M may separately meter electrical, gas and/or water for the Food Service Areas to monitor utility consumption by Chartwells.

5.3.3 Texas A&M does not guarantee an uninterrupted supply of water, steam, electricity, air conditioning, heat or gas, but it shall use reasonable efforts to restore utility service following any interruption. Texas A&M shall not be liable to Chartwells or to any third party for any loss, damage, cost or expense that may result from the interruption or failure of any such service, unless such interruption or failure is caused by Texas A&M's negligent acts or omissions.

5.4 Office Space

5.4.1 Texas A&M shall provide Chartwells with sufficient office space on the Texas A&M campus to house various administrative officials for dining services consistent with Section 4.1.7 (a) of this Agreement.

5.4.2 All office furniture and telephone equipment shall be supplied by Texas A&M. However, all computers and computer peripherals shall be supplied by Chartwells. Chartwells agrees it will not connect any technology, without prior consent from Texas A&M and that it will operate in conformity with all Texas A&M IT operation and security policies and procedures. Chartwells may lease computer equipment and other personal property from Texas A&M for its use in performing services under this Agreement, which Agreement must be in writing and upon terms agreed upon by Texas A&M and Chartwells.

5.5 **Equipment.** Texas A&M shall provide to Chartwells, for use by Chartwells, equipment, office furniture, smallwares, fixtures, facilities, supplies and materials ("University Equipment"), with a list of such equipment to be finalized by Texas A&M and provided to Chartwells within sixty (60) days of the final execution of this Agreement. Except as otherwise agreed among the Parties, Texas A&M shall retain ownership of the University Equipment. After the Effective Date, Chartwells shall provide, at its sole expense, all supplies and materials necessary for the Services and any additional or replacement equipment or fixtures not already provided by Texas A&M under this Agreement. Chartwells may not install or perform any data cabling or other

data network installation without prior review and approval by Texas A&M, such approval not to be unreasonably withheld, delayed or conditioned.

5.6 Food and Consumable Supplies. Texas A&M agrees to sell and Chartwells agrees to buy the useable, non-perishable food and consumable supplies (the “Consumable Assets”) identified in the Food and Supply inventory, a copy of which will be provided by Texas A&M to Chartwells within sixty (60) days of the final execution of this Agreement. The purchase price for the Consumable Assets shall be agreed to by the Parties following inspection and review of the Consumable Assets.

5.7 Contract Administration. Texas A&M shall appoint a contract administrator (the “University Contract Administrator”) who will be Texas A&M’s initial contact person for purposes of the day to day administration of this Agreement. All matters affecting the terms of this Agreement or the administration thereof shall be referred to the University Contract Administrator. The University Contract Administrator shall be contacted for changes or amendments to this Agreement, including but not limited to, changes in the scope of work, period of performance, cost, and report requirements. Only the University Contract Administrator may notify Chartwells of any such approval by Texas A&M and Chartwells proceeds at its own risk if it fails to receive such notification from the University Contract Administrator. The initial University Contract Administrator shall be B.J. Crain, Vice President for Finance and Chief Financial Officer. If in the future the University Contract Administrator changes, Texas A&M will provide such change in University Contract Administrator to Chartwells in writing.

6. SCOPE OF DINING SERVICES

In providing the Services, Chartwells shall furnish the highest quality of dining services to the students, faculty, staff and guests of Texas A&M, adhering to selection and purchase of food items, menus, prices, board plans, portions, hours of operations, style of service, improvements, special events, and other pertinent elements, all in accordance with and as set forth with specificity in the Contract Documents

6.1 Board Meal Plans.

6.1.1 For the 2012-13 school year, Chartwells will provide Texas A&M Board Meal Plans, including the declining balance meal plan, short-term meal plans and non-mandatory meal plans at the pricing levels in effect as of the Effective Date of this Agreement and in compliance with the Contract Documents. Should Chartwells determine after conducting a study of the current Board Meal Plans that changes should be made, Chartwells must submit its proposal in writing to Texas A&M for review, comment and approval by Texas A&M. Chartwells shall make no changes to any Texas A&M approved Board Meal Plan without the prior written approval of Texas A&M in each instance. Texas A&M agrees to allow Chartwells to implement a hybrid meal plan system beginning with school year 2013-14 while reserving the right to review and approve any specific hybrid meal plan proposals suggested by Chartwells and Texas A&M

further agrees that its approval will not be withheld unreasonably with regard to meal plan design and rates.

6.1.2 In the event the on-campus resident student population changes materially during the Term of this Agreement, Texas A&M and Chartwells will negotiate in good faith to adjust the financial terms of the Board Meal Plan rates to appropriately reflect the financial impact on Texas A&M or Chartwells of any such changes. For the purposes of the preceding sentence, a change in the on-campus resident student population by more than 5% from the on-campus resident student population for the preceding contract year, measured from the 30th class day after the start of the academic year, constitutes a material change. For Year One of this Agreement, the on-campus resident student population is as follows:

Traditional On-Campus Student Housing Population:	9,491
Corps of Cadets Student Housing Population:	2,070

6.2 **Retail/Meal Plan Pricing.**

6.2.1 Before implementing the Services, Chartwells shall submit to Texas A&M, for review, comment and approval by Texas A&M, proposed retail and meal plan menus by item, portion and price which shall be consistent with the Contract Documents. All subsequent new menus and new prices must be submitted to the University Contract Administrator for review, comment and approval as specified in the Contract Documents. Chartwells shall make no changes to any Texas A&M approved Board Meal Plan without the prior written approval of Texas A&M in each instance.

6.2.2 Board Meal Plan rates and prices for other products and Services may increase in each subsequent year by an amount to be negotiated, taking into account actual, documented increases in operating expenses, to include the cost of utilities associated with dining services. Such increase shall not exceed 3% in any year unless Chartwells provides actual documentation demonstrating increases in operating expenses exceed 3%, in which case Texas A&M and Chartwells will negotiate in good faith to adjust Board Meal Plan rates and prices as appropriate. Specifically, the Parties agree that 100% of the actual, documented utilities cost associated with dining services will be factored into the development of the meal plan rates for each year during the Term commencing with academic year 2013-14.

6.3 **Retail/Meal Plan Hours.** Before implementing the Services, Chartwells shall submit to Texas A&M, for review, comment and approval by Texas A&M, proposed hours of service for each food service operation which hours shall be consistent with the Contract Documents. Any subsequent change in hours of service must be submitted to the University Contract Administrator for review, comment and approval prior to such new hours becoming effective. Any requests for changes in hours of operation due to special circumstances (i.e. holidays, semester breaks, etc.) must be submitted for approval at least 30 days in advance. Chartwells shall make no changes to any Texas A&M approved hours for service without the prior written approval of Texas A&M in each instance.

6.4 **Catering.** Chartwells shall provide catering services to Texas A&M on and off Premises as requested. Financial arrangements shall be negotiated by the Parties on an event-by-event basis. Chartwells shall invoice Texas A&M for the catering services and Texas A&M shall pay said invoice within thirty (30) days of receipt. Within thirty (30) days of final execution of this Agreement, the Parties shall agree upon a plan for service of alcoholic beverages at catered events.

7. GENERAL OPERATIONS

7.1 **Oversight.** Chartwells will monitor all aspects of the Services operations in order to ensure that all Services are provided in accordance with the Agreement

7.2 **Quality Assurance.**

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

7.2.2 Performance Measures. Chartwells shall, consistent with the requirements of the Contract Documents and in consultation with Texas A&M, develop, implement, and execute a mutually agreed upon quality assurance program to include agreed-upon benchmarks for satisfaction, tools and metrics to measure quality levels of service, including real-time tracking mechanisms and action plans to correct any deficiencies (collectively, "Performance Measures"). The Parties will use the performance measurement evaluation tool attached and incorporated as Exhibit B to rate Chartwells' adherence to the Performance Measures and to determine the amount, if any of payments to be made by Chartwells to Texas A&M for deficient performance or by Texas A&M to Chartwells for superior performance. Within ninety (90) days of the Effective Date of this Agreement the Parties will review the performance measurement evaluation tool and provide adjustments as mutually agreed by the Parties. Thereafter, the performance measurement evaluation tool shall be updated on an annual basis as agreed by the Parties.

7.3 **Equipment.** For the duration of this Agreement, including the Initial Term and any renewal term, and subject to the provisions of Section 9.6, Chartwells will provide normal operator cleaning and operator maintenance, service and repair, as necessary, for the University Equipment. Before the commencement of the Services, and on an annual basis thereafter,

Chartwells and Texas A&M will conduct an equipment inventory and mutually agree upon an inventory confirmation document. Chartwells understands and agrees that the University Equipment shall be used only in connection with the Services and for no other purpose, unless expressly authorized in writing by the University Contract Administrator. Any other use of the University Equipment is unauthorized and must be reported immediately to the University Contract Administrator. At the expiration or termination of this Agreement, Chartwells shall return to Texas A&M all University Equipment and any equipment purchased by Texas A&M during the term of this Agreement and relating to performance of the Services in the condition received, ordinary wear and tear or loss or damage resulting from fire or other casualty not caused by Chartwells' negligence excepted.

7.4 **Safety**

7.4.1 Chartwells shall provide an aggressive program of accident prevention and safety education, and shall use its best efforts to protect the safety of Chartwells employees, and Texas A&M's students, faculty, staff and guests. Ongoing proper instructions on the use of equipment and food handling techniques shall be provided in the promotion of a safe and accident free environment. Chartwells shall immediately report fires, unsafe conditions, thefts, and security hazards to the University Contract Administrator or other appropriate campus official. Chartwells shall immediately fix and report to Texas A&M any citations or other notice of unsafe or unlawful conditions issued by Texas A&M or by any local, state or federal agencies.

7.4.2 Texas A&M shall furnish and maintain all fire extinguisher equipment and related fire suppression supplies and systems. Chartwells shall notify Texas A&M immediately after any fire extinguisher use or discharge.

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

7.6 **Pest Control.** Chartwells shall provide appropriate pest control services within the Food Service Areas, the office space and adjacent areas. All costs associated with pest control services shall be borne by Chartwells, must be coordinated with Texas A&M's pest control efforts and approved in writing by the University Contract Administrator.

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

the food production or storage areas. In addition to the promotion of recycling, Chartwells will compost food wastes in accordance with any future composting program negotiated and agreed upon jointly by Texas A&M and Chartwells. Texas A&M agrees to provide dumpsters, trash hauling, and cardboard recycling as part of the utilities charges to be paid by Chartwells.

7.8 **Signage.** Chartwells may display its business signs, logos, and other promotional materials at locations within the Texas A&M campus, provided that such display materials shall comply with all applicable Texas A&M policies, regulations, rules and procedures and that such materials are approved by Texas A&M in writing prior to display.

8. CAPITAL IMPROVEMENTS

8.1 Prior to the commencement of any Capital Improvements, as defined in Section 9.3.1, or any other substantial equipment purchase, maintenance, repairs or improvements in connection with the Services or the Food Service Areas, Chartwells shall prepare and submit to the University Contract Administrator for review and approval a schedule of each such capitalized expenditure or improvement which Chartwells intends to perform. Each schedule of capitalized expenditures or improvements shall describe the general nature of the equipment, maintenance, repairs or improvements to be performed; an estimated budget for each such expenditure or project; schematic design and construction drawings; bid proposals; purchase orders; and other related documents. Upon completion, Chartwells shall provide Texas A&M with “as built” drawings, if applicable, and verification of payment.

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

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

9. FINANCIAL ARRANGEMENTS

9.1 **Costs and Expenses.** Chartwells shall pay all costs and expenses for all goods, services, materials, supplies and other expenses incurred or otherwise necessary in connection with providing the Services, other than those costs and expenses specifically allocated to Texas A&M in the Contract Documents. Chartwells shall pay for costs and expenses for equipment, furnishings, fixtures to the extent provided for in Sections 9.3.1 and 9.6.

9.2 Commissions

9.2.1 Commission Rate. Chartwells shall pay to Texas A&M a percentage commission (the “Commission”) of all Gross Revenue derived in connection with this Agreement. Gross Revenue shall be defined to include all revenue received by Chartwells or otherwise derived from any sales, services or other sources in connection with this Agreement (excluding sales taxes) including sales or other revenue received from any subcontractor, assignee, concessionaire, licensee or other vendor operating under this Agreement, whether such sales be evidenced by check, cash, debit account, credit, charge account, exchange or otherwise. The Commission shall be calculated at the following percentage rates:

Year 1:

Retail Sales (all sales other than Third Party National Brands)	5%
Retail Sales (Third Party National Brands only)	5%
Catering	5%
Conferences (as defined in the Contract Documents)	5%
Meal plan sales	5%

Year 2 through end of Term:

Retail Sales (all sales other than Third Party National Brands)	10%
Retail Sales (Third Party National Brands only)	10%
Catering	10%
Conferences (as defined in the Contract Documents)	10%
Meal plan sales	10%

9.2.2 Commission Guarantee. Chartwells guarantees a minimum commission of \$52,000,000 (the “Commission Guarantee”) over a ten year period with annual minimum commission payments to Texas A&M for each year during the Initial Term in accordance with the following schedule:

Year 1	\$2,600,000
Year 2	\$4,700,000
Year 3	\$4,900,000
Year 4	\$5,100,000
Year 5	\$5,300,000
Year 6	\$5,500,000
Year 7	\$5,700,000
Year 8	\$5,900,000
Year 9	\$6,100,000
Year 10	\$6,200,000

In the event the Agreement is renewed for the Renewal Term, Chartwells guarantees a minimum commission of \$6,000,000 each year during the Renewal Term.

9.2.3 Payment of Commission. Chartwells shall pay to Texas A&M an amount equal to the annual Commission Guarantee during each year of the Term, payable in ten (10) equal monthly

installments due on the tenth (10th) day of each month from August through May. In the event Commissions calculated in accordance with Section 9.2.1 exceed the applicable Commission Guarantee, Chartwells shall pay Texas A&M the excess of such Commissions over the Commission Guarantee within thirty (30) days after the end of the then contract year.

9.2.4 Rebate/Credit Sharing. Texas A&M accepts that Chartwells or its parent company, Compass Group USA, Inc. (“Compass”) may receive volume, trade or cash discounts for items purchased as part of doing business at University/College and that those discounts will accrue to Chartwells and/or Compass and will not be credited back to Texas A&M. Texas A&M understands that certain charges reflected on the Profit and Loss statement are based on a portion of overall company expenses.

9.2.5 New Dining Facilities. Chartwells shall have the first option to operate food service at newly designated, constructed, or additional dining service operations and facilities.

9.3 **Capital Improvements and Pre-Opening Expenses**

9.3.1 Budget for Capital Improvements. Chartwells agrees to allocate and invest Twenty Five Million Five Hundred Seven Thousand (\$25,507,000) (the “Capital Improvement Budget”) for capitalized equipment, vehicles, and improvements to Texas A&M buildings and facilities used in connection with the Services (the “Capital Improvements”). The Capital Improvements shall be completed within a 3-year consecutive period to be selected by Texas A&M during the Term of this Agreement. Such Capital Improvements shall be consistent with the capital improvements as generally described in the Contract Documents. Any unexpended balance remaining in the Capital Improvement Budget after the conclusion of the 3-year consecutive period outlined above shall be utilized for such capital improvements as Texas A&M may designate.

9.3.2 Pre-Opening Expenses. Chartwells will fund Pre-Opening Expenses, in a total sum not to exceed One Million (\$1,000,000) Dollars (the “Pre-Opening Expenses”). The Pre-Opening Expenses will be amortized on a straight line basis from October 2012 through September 2015. Texas A&M shall hold title to items funded by the Pre-Opening Expenses. Pre-Opening Expenses include, but are not limited to, travel, meals, lodging, opening promotions and advertising, accounting and operating manuals and systems, interviewing and relocation, salaries and fringe benefits, crew training, and other expenses related to preparing for, and commencing performance of services for the 2012-2013 academic year.

9.4 **Scholarship Fund.** On or before October 1, 2012, and on the anniversary date for each year thereafter throughout the Term of this Agreement, Chartwells shall provide to Texas A&M a scholarship contribution to the general scholarship fund of Texas A&M in the amount of Ten Thousand dollars (\$10,000.00) to be used for the benefit of students of Texas A&M, with all decisions regarding the qualifications for and awarding of the scholarship funds to remain with Texas A&M.

9.5 **In-Kind Catering.** Chartwells agrees to provide to Texas A&M a catering declining balance allowance in the amount of \$117,300 in retail value of catering services provided by Chartwells for each twelve (12) month period during the Initial Term and any Renewal Term of

this Agreement. This allowance will be allocated at the discretion of the President of Texas A&M or the President's designee. This allowance shall be available for use commencing as of the Effective Date. Unused amounts expire and revert to Chartwells at the end of the twelve (12) month period.

9.6 **Contingency Fund.** Chartwells agrees to contribute a total of \$5,000,000 during the Initial Term, and the amount of \$500,000 each year during the Renewal Term, to a contingency fund to be used for the repair, replacement and upgrade of Texas A&M owned food service equipment as required under Sections 4.11 and 7.3 above (the "Contingency Fund"). All expenditures from the Contingency Fund shall be mutually agreed upon by the Parties. If the Contingency Funds in the Initial Term or any year of the Renewal Term is not fully utilized, they roll over. In the event the Contingency Fund is exhausted during the Initial Term or the Renewal Term, the Parties shall negotiate in good faith which Party or Parties shall fund the cost of repairs, replacements and upgrades in excess of the Contingency Fund. In the event the Contingency Fund is not exhausted upon expiration of the Initial Term or the Renewal Term, the fund balance shall be paid to Texas A&M.

9.7 **Smallwares.** Chartwells agrees to invest a total of \$2,426,000 during the Initial Term, and the amount of \$242,600 during each year of the Renewal Term, in replacement of and addition to smallwares as needed to be used in the operation of the Facilities ("Smallwares Fund"). All expenditures from the Smallwares Fund shall be mutually agreed upon by the Parties. Ownership of all smallwares shall remain with Texas A&M upon termination of this Agreement. If the Smallwares Fund in the Initial Term or any year of the Renewal Term is not fully utilized, they roll over. In the event the Smallwares Fund is exhausted during the Initial Term or the Renewal Term, the Parties shall negotiate in good faith which Party or Parties shall fund the cost of replacement of and addition to smallwares in excess of the Smallwares Fund. In the event the Smallwares Fund is not exhausted upon expiration of the Initial Term or the Renewal Term, the fund balance shall be paid to Texas A&M.

9.8 **One-Time Unrestricted Bonus.** Chartwells shall pay to Texas A&M a one-time unrestricted bonus of \$22,770,450 of which \$5,000,000 shall be paid upon execution of this Agreement, and \$17,770,450 shall be paid on October 2, 2012 (the "Unrestricted Bonus"). The Unrestricted Bonus shall be amortized on a straight line basis as follows: (a) \$5,000,000 will be amortized from August 3, 2012 through August 2, 2024; (b) 17,770,450 will be amortized from October 2, 2012 through August 2, 2024. Texas A&M shall hold title to items funded by the Unrestricted Bonus.

9.9 **Exclusivity.** Texas A&M may subsequently grant exclusive catering rights to Chartwells, in which case Chartwells shall make annual payments to Texas A&M in at least the following minimum amounts beginning after Year One:

August 2013	\$123,888
August 2014	\$123,888
August 2015	\$123,888
August 2016	\$123,888
August 2017	\$123,888
August 2018	\$123,888

August 2019	\$123,888
August 2020	\$123,888
August 2021	\$123,888
August 2022	\$115,000
August 2023	\$115,000

9.10 **Point of Sales (POS) System.** Texas A&M will provide all necessary POS Systems, including existing POS systems, repairs thereto, replacements thereof, and additions thereto, whether required due to upgrades, addition of facilities, implementation of declining balance meal plans, or other reasons. Chartwells will pay to Texas A&M an annual amount of \$50,000 for license fees on the POS software and equipment currently in place at Texas A&M with a 3% increase per year for the term of this Agreement. Chartwells shall incorporate its use into management of the current Facilities and future dining service facilities. This payment shall be made by Chartwells on the first day of each contract year of this Agreement.

9.11 **Board Plan Payments.** Texas A&M shall pay to Chartwells a percentage of meal plan payments, according to the following schedule:

- 50% on the 5th calendar day after the commencement of classes
- 25% on the 30th calendar day after the commencement of classes
- 25% on the 60th calendar day after the commencement of classes

The last two payments will be adjusted for changes, additions, and deletions. A final settlement for the semester will occur five (5) calendar days after commencement ceremonies and will include adjustments for changes, additions, and deletions. Texas A&M will provide appropriate documentation and records to Chartwells regarding board plan purchases, refunds and other adjustments.

9.12 **Financial Reports**

9.12.1 On or before the 5th day immediately following the last day of the previous week for each week during the Term of this Agreement, Chartwells shall deliver to Texas A&M a weekly report of sales and commissions realized during the previous week. Chartwells shall also provide to Texas A&M a complete set of financial statements for each month no later than the 15th day following the last day of each month during the Term of this Agreement, and such other periodic financial statements and reports as may be required by the Contract Documents.

9.12.2 As more particularly described in the Contract Documents, the periodic financial statements shall cover the current month and year-to-date, and provide information regarding budgeted and actual sales and/or other income, commissions paid, commissions due, expenditures for capital improvements and assets, and such other information as Texas A&M may reasonably request. Causes and appropriate documentation of irregular revenue and expense deviations shall be noted by Chartwells as part of these statements.

9.12.3 Chartwells shall periodically meet with the University Contract Administrator to review the periodic financial statements, explain deviations, discuss problems and mutually agree on course of action to improve the results of the required services included in this Agreement.

9.13 **Meal Plan Charges.** Texas A&M shall provide Chartwells with access to its board plan tracking systems to enable Chartwells to track and reconcile aggregate student meal plan participation, as well as actual meal plan use and declining balance use, and to enable Chartwells to generate reports to assess metrics of the Dining Service Program. Texas A&M shall notify Chartwells in writing of any Texas A&M directed changes to meal plans.

9.14 **Catering Charges.** Chartwells shall submit special event invoices for catering and related charges to the appropriate Texas A&M department no later than fourteen (14) days after the service is rendered. Invoices shall be accurate and properly documented. Texas A&M shall make payment to Chartwells within thirty (30) days of receipt of a correct invoice, in accordance with Texas Prompt Pay laws.

9.15 **Non-University Special Events.** Billing and collections for special events, catering, or conferences not sponsored by Texas A&M shall be the sole responsibility of Chartwells and shall be reported as a separate operating unit on financial statements.

9.16 **Accounting for Debit Cards.** Texas A&M shall be responsible for collecting and maintaining all funds for credits in connection with Texas A&M's declining balance card system existing as of the Effective Date of this Agreement. All outstanding declining balance card credits held by Texas A&M as of the Effective Date shall be delivered to Chartwells and thereafter Chartwells shall be responsible for maintaining the account balance for all such credits delivered by Texas A&M and for the funds for credits collected by Chartwells. Chartwells shall receive all declining balance revenues during the Term.

9.17 **Records, Audits, and Review**

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

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

9.17.3. Retention. All records pertaining to work performed in accordance with this Agreement shall be kept on file by Chartwells for a period of three (3) years from the date the record is made.

10. INSURANCE AND INDEMNIFICATION

10.1 Indemnification. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT STATING THAT TEXAS A&M WILL INDEMNIFY OR HOLD HARMLESS CHARTWELLS OR ANY OTHER PARTY, TEXAS A&M SHALL BE OBLIGATED TO INDEMNIFY AND HOLD HARMLESS ONLY TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS. EACH PARTY SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER, INCLUDING ITS RESPECTIVE OFFICERS, EMPLOYEES, GOVERNING BOARD AND AGENTS, HARMLESS FROM ANY AND ALL LOSSES, DAMAGES OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM CLAIMS OR ACTIONS FOR BODILY INJURY, DEATH, SICKNESS, PROPERTY DAMAGE OR OTHER INJURY OR DAMAGE CAUSED BY ANY NEGLIGENT ACT, ERROR OR OMISSION, WILLFUL MISCONDUCT, OR BREACH OF THIS AGREEMENT BY SUCH PARTY. THE RIGHT OF A PARTY (THE "INDEMNIFYING PARTY") TO INDEMNIFICATION UNDER THIS AGREEMENT SHALL BE CONDITIONED UPON THE FOLLOWING: PROMPT WRITTEN NOTICE TO THE PARTY OBLIGATED TO PROVIDE INDEMNIFICATION (THE "INDEMNIFYING PARTY") OF ANY CLAIM, ACTION OR DEMAND FOR WHICH INDEMNITY IS CLAIMED; CONTROL OF THE INVESTIGATION, PREPARATION, DEFENSE AND SETTLEMENT THEREOF BY THE INDEMNIFYING PARTY; AND SUCH REASONABLE COOPERATION BY THE INDEMNIFIED PARTY, AT THE INDEMNIFYING PARTY'S REQUEST AND EXPENSE, IN THE DEFENSE OF THE CLAIM. THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE OF A CLAIM WITH COUNSEL OF INDEMNIFIED PARTY'S CHOICE AND AT ITS EXPENSE. THE INDEMNIFYING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE INDEMNIFIED PARTY (WHICH SHALL NOT BE UNREASONABLY WITHHELD), SETTLE, COMPROMISE OR CONSENT TO THE ENTRY OF A JUDGMENT THAT IMPOSES ANY LIABILITY UPON THE INDEMNIFIED PARTY.

10.2 Insurance

10.2.1 Coverage. Chartwells shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. All coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas and currently rated A- or better by A.M. Best Company or otherwise acceptable to Texas A&M. By requiring such minimum insurance, Texas A&M shall not be deemed or construed to have assessed the risk that may be applicable to Chartwells under this Agreement. Chartwells shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Chartwells is not relieved of any liability or

other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Required insurance shall not be cancelable without written notice to Texas A&M.

10.2.2 Policy Limits. Insurance must be carried to at least the following minimum amounts, it being understood that minimum policy limits may be provided through a combination of primary and excess insurance and that the excess or umbrella insurance shall follow the form of the primary insurance:

<u>Coverages</u>	<u>Limit</u>
A. Worker’s Compensation	
Statutory Benefits (Coverage A)	Statutory
Employer’s Liability (Coverage B)	\$2,000,000 Each Accident
	\$2,000,000 Disease/Employee
	\$2000,000 Disease/Policy Limit
B. Automobile Liability	
Owned Vehicles \$1,000,000	\$5,000,000
Non-owned Vehicles	\$5,000,000
Hired Vehicles	\$5,000,000
C. Commercial General Liability	
Aggregate Limit	\$10,000,000
Each Occurrence Limit	\$1,000,000
Products / Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to Premises	\$1,000,000
D. Commercial Crime Insurance	
Employee Dishonesty	\$500,000
	\$500,000
E. Professional Liability	
Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
F. Umbrella/Excess Liability	
Each Occurrence Limit	\$10,000,000
Aggregate Limit	\$10,000,000

Additional Endorsements

Auto and Commercial General Liability Policies shall list The Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured. Chartwells certifies that it is self-insured for property damage to vehicles leased from Texas A&M.

10.2.3 Subrogation. Both Parties shall waive their insurers' rights of subrogation against the other Party. All policies of insurance shall be endorsed to be primary.

10.2.4 Certificate of Insurance. Chartwells will provide certificates indicating such insurance is in force and effect within 10 working days after full execution of this Agreement. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

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

11. LICENSES, PERMITS AND TAXES

11.1 Chartwells shall secure in its name and at its expense all federal, state, and local licenses and permits required for provision of the Services, including those required for the purchase and sale of alcoholic beverages consistent with this Agreement. It is agreed and understood that the alcoholic beverage permits may be held in the name of Chartwells' affiliate, University Food Services, Inc. Chartwells shall also pay all taxes which may be levied in connection with the performance of the Services and other operations under this Agreement, including taxes levied or incurred against Chartwells' inventory, personal property, fixtures, sales, licenses, income, and any other such taxes.

11.2 Texas A&M does not collect and remit sales tax on meal plans sold by Texas A&M. In the event of a change in law which renders such meal plans taxable, Texas A&M shall collect and remit sales tax on declining balance meal plan sales.

12. PARKING

All Chartwells employees desiring to obtain parking permits shall purchase such permits directly from Texas A&M.

13. CONFIDENTIALITY

13.1 In the course of providing Services hereunder, the Parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other Party which includes, but is not limited to, menus, recipes, signage, food service surveys and studies, management guidelines, procedures, operating manuals and software, all of which shall be identified as

confidential (“Confidential Information”). The Parties agree to hold in confidence and not to disclose any Confidential Information during the Term of this Agreement and for two (2) years afterward, except that the Parties may use or disclose Confidential Information:

- (a) to its employees and affiliates or others to the extent necessary to render any service hereunder, provided that the other Party is first notified of the information that will be provided to any party outside of this Agreement and provided further that such information is disclosed only after such party is required to maintain it in confidence as required hereunder;
- (b) to the extent expressly authorized by either Party;
- (c) to the extent that at the time of disclosure, such Confidential Information is in the public domain, or after disclosure, enters the public domain other than by breach of the terms of this Agreement;
- (d) that is in the possession of either Party at the time of disclosure and is not acquired directly or indirectly from the other Party;
- (e) that is subsequently received on a non-confidential basis from a third party having a right to provide such information; or
- (f) Subject to Section 13.4 below, as required by Texas law;
- (g) Subject to Section 13.4 below, order of a court or administrative body with jurisdiction;
- (h) Subject to Section 13.4 below, as required by an order during the course of a judicial or regulatory proceeding or as required by a government authority.

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

13.3 Texas Public Information Act Requirements. Notwithstanding the foregoing subsection, and subject to Section 13.4 below, Chartwells acknowledges that Texas A&M is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.

13.4 In the event Texas A&M receives a request or notice to produce information provided by Chartwells and marked by Chartwells as confidential, proprietary, or trade secret, Texas A&M shall (i) assert the confidential nature of the information to be disclosed, (ii) use reasonable efforts to obtain confidential treatment for any information so disclosed, including without limitation cooperating with Chartwells in asserting grounds to seek such confidential treatment, (iii) immediately notify Chartwells in writing of the requirement, order, or request to disclose in advance of such disclosure in order to afford Chartwells the opportunity to determine whether the requested information is protected from disclosure and to assist in Texas A&M’s efforts to obtain confidential treatment of such Confidential Information and to enable Chartwells to contest disclosure if allowable, (iv) absent a non-appealable final order, decree or judgment of

any court or governmental body having competent jurisdiction to the contrary, refrain from releasing Chartwells' information until at least seven (7) business days after Texas A&M shall have provided Chartwells with advance written notice of such requirement, order, or request to disclose, so that Chartwells may take reasonable steps to preclude such disclosure, it being specifically understood that such notice must be provided not only upon Texas A&M's receipt of a requirement, order, or request to disclose, but also upon the receipt of any appealable order, decree or judgment of any court or governmental body having competent jurisdiction directing the release of such information.

14. RELATIONSHIP OF THE PARTIES

14.1 Independent Contractors. In performing the Services and other responsibilities required under this Agreement, Chartwells shall be acting as an independent contractor and not as an employee, agent, partner, or joint venture of Texas A&M. Neither Texas A&M nor Chartwells shall have any authority to act for or on behalf of the other Party, or to incur any debts or other obligations on behalf of the of the Party, or to incur any debts or other obligations on behalf of the other, except as expressly provided for herein. Subject to Sections 4.1.6 and 15, neither Party shall use the name or any trademark of the other in any advertising, marketing, letterhead, sales promotion, publicity or for any other purpose without, in each instance, the prior written approval of the other.

14.2 Relationship to Third Parties. Nothing contained in the Contract Documents shall create any professional obligation or contractual relationship between Texas A&M and any third party, including without limitation, any consultant, contractor, subcontractor or supplier of Chartwells. Nothing contained in the Contract Documents shall create any professional obligation or contractual relationship between Chartwells and any third party, including without limitation, any consultant, contractor, subcontractor or supplier of Texas A&M. Nothing contained in this Agreement is intended to confer upon any person or entity other than the Parties any rights, benefits or remedies of any kind or character whatsoever, and no person or entity shall be deemed a third-party beneficiary under or by reason of this Agreement.

15. PROPRIETARY MARKS

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

15.2 Chartwells acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to Texas A&M (collectively "Texas A&M Marks") are proprietary marks of Texas A&M. Chartwells will not use Texas A&M Marks for any purpose except as expressly permitted in

writing by Texas A&M. Upon termination of this Agreement, Chartwells shall discontinue the use and display of any Texas A&M Marks and shall allow Texas A&M to remove all goods bearing any Texas A&M Marks.

16. INFORMATION TECHNOLOGY SYSTEMS

In connection with the services being provided hereunder, Chartwells may need to operate certain information technology systems not owned by Texas A&M (“Non-Texas A&M Systems”), which may need to interface with or connect to Texas A&M’s networks or information technology systems (“Texas A&M Systems”).

16.1 Chartwells shall be responsible for all Non-Texas A&M Systems, and Texas A&M shall be solely responsible for Texas A&M Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If Chartwells serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Chartwells will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data (“Data Protection Rules”). Chartwells and Texas A&M shall work together to implement processing of credit or debit cards by interfacing or connecting to Texas A&M systems in compliance with the Data Protection Rules. If, despite their reasonable and diligent efforts, Chartwells and Texas A&M are not able to implement such processing of credit or debit cards by interfacing or connecting to Texas A&M systems in compliance with the Data Protection Rules, credit or debit transactions will be transmitted over a Chartwells private data network that is physically separate from the Texas A&M data network, and Chartwells shall install, implement and operate such network at its own expense. If Non-Texas A&M Systems interface with or connect to Texas A&M Systems, then Texas A&M agrees to implement forthwith upon request from Chartwells, at Chartwells’ expense, the changes to Texas A&M Systems that Chartwells reasonably requests and believes are necessary or prudent to ensure Chartwells’ compliance with the Data Protection Rules.

16.2 Texas A&M will promptly provide Chartwells with written notice of any change to its policies pertaining to Texas A&M Systems, or change in configuration of Texas A&M Systems, in order that Chartwells may assess the impact of such change upon the security of Non-Texas A&M Systems. To the extent permitted by the Constitution and laws of the state of Texas, each party shall indemnify, defend and hold harmless the other party from all claims, liabilities, damages and costs (including reasonable lawyer’s fees) to the extent caused by the indemnifying party’s failure to comply with its obligations in this section.

17. HISTORICALLY UNDERUTILIZED BUSINESS

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

17.2 Chartwells agrees to allocate work to subcontractors as listed (or indicated) in its HUB Subcontracting Plan, in accordance with The A&M System Policy on Historically Underutilized Businesses. No changes to the HUB Subcontracting Plan may be made unless approved in writing by Texas A&M. While this Agreement is in effect and until the expiration of one year after completion, Texas A&M may require information from Chartwells, and may conduct audits, to assure that the HUB Subcontracting Plan is followed.

17.3 Each Accounting Period an HSP – Prime Contractor Progress Assessment Report form must be submitted by Chartwells as provided in the Contract Documents. Submission of such progress assessment reports will be addressed in the performance measurement tool described in Section 7.2.2 above.

18. TERMINATION

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

a. **Termination for Default.** In the event of Substantial Failure by either Party to perform in accordance with the terms of this Agreement, the other Party may terminate this Agreement upon ninety (90) days written notice of termination setting forth the nature of the failure, provided that the failure is through no fault of the other Party and is not due to Force Majeure conditions. The termination shall not be effective if (i) the other Party fully cures the failure within thirty (30) calendar days of receipt of the written notice, or (ii) such failure is of a nature that it cannot be cured within thirty (30) calendar days, and the Party in default shall have promptly commenced curing such default within such thirty (30) calendar day period and shall thereafter proceed to cure such default with reasonable diligence in good faith without interruption except for causes reasonably beyond its control. For purposes of this Section 18.1, the term “Substantial Failure” shall mean material non-compliance with the requirements of this Agreement which:

- (a) is material and continues over a protracted period of time;
- (b) is repeated at least three (3) times in a twelve (12) month period or is systematic and is not corrected or adequately responded to once identified;
- (c) results in material non-compliance with applicable laws or regulations resulting in substantial harm to Texas A&M;
- (d) materially interferes with or impedes the other Party’s ability to perform its responsibilities under this Agreement; or
- (e) materially deprives the other party of the benefits it reasonably anticipated under this Agreement.

b. **Termination for Convenience.** Either Party may, at its sole discretion, without cause and at its convenience, terminate this Agreement at any time upon giving one hundred eighty (180) days advance notice to the other Party. Upon termination pursuant to this Section 18.1 (b), Texas A&M shall compensate Chartwells for the Services

satisfactorily performed from the time of the last payment date to the termination date in accordance with then applicable rates under this Agreement, and Chartwells shall pay to Texas A&M commissions due through the date of termination, with the annual commission guarantee calculated on a pro rata basis. Except as otherwise specifically provided for herein, neither Party shall be required to reimburse or pay the other Party for any services performed or expenses or liabilities incurred after the effective date of termination.

c. **Restriction on Damages. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT STATING THAT TEXAS A&M WILL AGREE TO LIMIT THE LIABILITY OF CHARTWELLS OR ANY OTHER PARTY, TEXAS A&M SHALL BE OBLIGATED TO LIMIT ITS LIABILITY ONLY TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS. IF THIS AGREEMENT IS TERMINATED FOR ANY REASON, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DAMAGES (INDIRECT, CONSEQUENTIAL, OR SPECIAL), CLAIMS, LOSSES, OR ANY OTHER AMOUNTS ARISING FROM OR RELATED TO ANY SUCH TERMINATION EXCEPT FOR LIABILITIES AND OBLIGATIONS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR UNDER APPLICABLE LAW.**

18.2 **Termination Transition.** Upon the termination or expiration of this Agreement for any reason, Chartwells shall, as soon thereafter as is feasible, but in no event later than thirty (30) days after the effective date of termination or expiration of this Agreement, vacate all parts of the Premises occupied by Chartwells, remove its non-food services related equipment and property and return the Facilities to Texas A&M, together with all the equipment furnished by Texas A&M or food service related property and equipment purchased by Chartwells for performance under this Agreement, in the same condition as when originally made available to Chartwells or purchased by Chartwells, excepting reasonable wear and tear, fire and other casualty loss. If requested in writing by Texas A&M, and provided such agreements are assignable by their terms, Chartwells shall assign to Texas A&M all franchise or license agreements for branded concepts and subcontracts regarding the dining service operations at Texas A&M.

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

18.4 **Consumables Inventory Disposition.** At the termination of this Agreement, if requested by Chartwells and agreed to by Texas A&M, Texas A&M may either purchase directly or cause Chartwells' successor to purchase Chartwells' usable inventory of food and supplies, it being further agreed that if Chartwells maintains an inventory of supplies bearing the logo of Texas A&M, or logo items of a sponsor that Chartwells is required to use pursuant to a Texas A&M pouring rights or similar agreement, Texas A&M shall either purchase directly or cause Chartwells' successor to purchase Chartwells' usable inventory of such logoed supplies. The purchase price for such food and/or supplies shall be at Chartwells' invoice cost.

18.5. Chartwells Employees. In the event of termination or expiration of this Agreement, Texas A&M may offer employment to employees other than Senior Management of Chartwells engaged in providing the Services, and Chartwells shall assist Texas A&M in the transfer of any such employees other than Senior Management electing to accept employment with Texas A&M, and/or any successor contractor selected by Texas A&M. Texas A&M shall not during the Term of this Agreement or for two (2) years thereafter solicit to hire, hire or contract with Chartwells' Senior Level Managers, at any time within one (1) year prior to the termination or expiration of this Agreement, nor will Texas A&M permit Senior Level Managers of Chartwells to be employed on Texas A&M's Premises, for a period of two (2) years subsequent to the termination or expiration of this Agreement (unless such employees were formerly employees of the Texas A&M) whether as an individual or as owner, partner, majority stockholder, director, officer or employee of a food service provider ("Two-year Non-solicitation"). In the event of any breach of such Two-year Non-solicitation, Texas A&M shall pay and Chartwells shall accept an amount equal to twice the annual base salary of the relevant Senior Level Manager as liquidated damages.

18.6 Recovery of Capital Investment. The Parties acknowledge that Chartwells' investment in the Capital Improvements is made in anticipation of amortizing the cost of the Capital Improvements from the from the date the assets and improvements funded with the Capital Improvements are placed in service until August 2, 2024, using straight-line amortization and without interest, and Chartwells shall amortize the Capital Improvements over this period. Texas A&M shall hold title to all assets acquired with the Capital Improvements. The Parties further acknowledge that Chartwells has, or will, invest the entire Capital Improvement Budget in anticipation that this Agreement will continue throughout the entire Term. However, except as otherwise provided in the last sentence of this section, in the event this Agreement expires, is terminated by Chartwells pursuant to Section 18.1.a, or is terminated by Texas A&M pursuant to Section 18.1.b, before the expiration of the Term, then Texas A&M shall pay, or cause to be paid, to Chartwells the then remaining unamortized value of the Capital Improvements as follows: (a) in the event Texas A&M engages another food service contractor and such contractor agrees to make payment to Chartwells, such payment shall be due to Chartwells within ninety (90) days after the date of expiration or termination; (b) in the event Texas A&M does not engage another food service contractor or the new food service contractor does not agree to make payment to Chartwells, such payment shall be due to Chartwells within one hundred eighty (180) days after the date of expiration or termination. Notwithstanding any other provision in this Section, the Parties agree that Texas A&M's obligation to reimburse Chartwells for the unamortized value of the Capital Improvements shall apply only to those Capital Improvements paid for from the Capital Improvement Budget and approved by Texas A&M as required under Section 8 of this Agreement. The foregoing notwithstanding, with respect to assets leased by Chartwells, the amount, if any, due from Texas A&M to Chartwells under this Section upon expiration or termination of the Agreement shall be equal to the amount due under the applicable asset lease to buy out Chartwells' lease obligations.

18.7 Recovery of Pre-Opening Expenses. If this Agreement is terminated by Chartwells pursuant to Section 18.1.a, or is terminated by Texas A&M pursuant to Section 18.1.b, before the full amortization of the Pre-Opening Expenses, then Texas A&M shall pay, or cause to be paid, to Chartwells, the then remaining unamortized value of the Pre-Opening Expenses as follows: (a)

in the event Texas A&M engages another food service contractor and such contractor agrees to make payment to Chartwells, such payment shall be due to Chartwells within ninety (90) days after the date of expiration or termination; (b) in the event Texas A&M does not engage another food service contractor or the new food service contractor does not agree to make payment to Chartwells, such payment shall be due to Chartwells within one hundred eighty (180) days after the date of expiration or termination.

18.8 Recovery of One-Time Unrestricted Bonus. If the Agreement expires, is terminated by Chartwells pursuant to Section 18.1.a, or is terminated by Texas A&M pursuant to Section 18.1.b, before the full amortization of the Unrestricted Bonus, then Texas A&M shall pay, or cause to be paid, to Chartwells the then remaining unamortized value of the Unrestricted Bonus as follows: (a) in the event Texas A&M engages another food service contractor and such contractor agrees to make payment to Chartwells, such payment shall be due to Chartwells within ninety (90) days after the date of expiration or termination; (b) in the event Texas A&M does not engage another food service contractor or the new food service contractor does not agree to make payment to Chartwells, such payment shall be due to Chartwells within one hundred eighty (180) days after the date of expiration or termination.

19. MISCELLANEOUS

19.1 Force Majeure. In the event that performance of any terms or provisions hereof (other than obligations to make payments that have become due and payable pursuant to this Agreement) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, Acts of God, pandemic, epidemic, or any other reason whatsoever which is not within the control of the Party whose performance is interfered with and which, by the exercise of reasonable diligence said Party is unable to prevent, the Party so suffering may at its option suspend, without liability, the performance of its obligations hereunder during the period such cause continues and may extend the Term of this Agreement for the period of such suspension of the performance of duties hereunder.

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

19.3 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the provision of Chartwells' Services and supersedes all other written or oral understandings or agreements between the Parties with respect to the provision of Chartwells' Services on the Premises. No variation or modification of this Agreement or attached Exhibits and no waiver of their provisions shall be valid unless in writing and signed by the duly authorized officers of Chartwells and Texas A&M.

19.4 **Severability.** Each term and condition, article, paragraph and subparagraph of this Agreement and any portion thereof, will be considered severable. If, for any reason, any portion of this Agreement is determined to be invalid, contrary to or in conflict with any applicable present or future law, rule or regulation in a final ruling issued by any court, agency or tribunal with valid jurisdiction, that ruling will not impair the operation of or have any other effect upon, any other portions of this Agreement; all of which will remain binding on the Parties and continue to be given full force and effect.

19.5 **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by personal delivery, courier delivery or facsimile transmission. The parties may give notices of operational or day-to-day matters via electronic mail. Texas A&M and Chartwells may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as indicated below. Rejection or other refusal to accept such notice shall not affect the validity or effectiveness of the notice given.

To Texas A&M:	Texas A&M University Attention: B.J. Crain Vice President for Finance and CFO 1181 TAMU College Station, TX 77843-1181 Facsimile No. 979-862-7778 Email: bjcrain@tamu.edu
with a copy to:	Texas A&M University System Office of General Counsel John B. Connally Bldg., 6 th Floor 301 Tarrow College Station, Texas 77840-7896 Facsimile No. (979) 458-6150
To Chartwells:	Compass Group USA, Inc. d/b/a Chartwells Attention: Steven M. Sweeney, President & CEO 3 International Drive Rye Brook, New York 10573 Facsimile No. (914) 935-5553 Email: Steve.Sweeney@compass-usa.com
with a copy to:	Compass Group USA, Inc. Attention: General Counsel 2400 Yorkmont Road Charlotte, North Carolina 28217 Facsimile No. (704) 329-4010

19.6 Governing Law and Venue. The substantive laws of the State of Texas (and not its conflicts of law principles), USA, govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Pursuant to Section 85.18 (b), *Texas Education Code*, venue for a state court suit filed against The Texas A&M University System, any component of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located. At execution of this Agreement, such county is Brazos County, Texas. Venue for any suit brought against The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

19.7 Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement be included in this Agreement, which is certified by the signatory of the vendor hereto: “Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

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

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

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

19.11 Products and Materials Produced in Texas. Chartwells agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, Chartwells will purchase products and materials produced in Texas when such

products and materials are available at a price and time comparable to products and materials produced outside of Texas.

19.12 **Loss of Funding.** Performance by Texas A&M under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Texas A&M will issue written notice to Chartwells and Texas A&M may terminate this Agreement without further duty or obligation hereunder, except that upon such termination Texas A&M shall remain liable for and shall pay to Chartwells all amounts due for Services provided through the date of such termination, together with the unamortized balance of the Unrestricted Bonus, the unamortized balance of the Pre-Opening Expenses, and the unamortized balance of Capital Improvements, as applicable and only as specifically provided in this Agreement. Chartwells acknowledges that appropriation of funds is beyond the control of Texas A&M.

19.13 **Non-Waiver.** Chartwells expressly acknowledges that Texas A&M is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Texas A&M of its right to claim such exemptions, privileges, and immunities as may be provided by law.

19.14 **Dispute Resolution.** The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Texas A&M and Chartwells to attempt to resolve any claim for breach of contract made by Chartwells that cannot be resolved in the ordinary course of business. Chartwells shall submit written notice of a claim of breach of contract under this Chapter to the University Contract Administrator defined herein, who shall examine Chartwells’ claim and any counterclaim and negotiate with Chartwells in an effort to resolve the claim.

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

19.16 **Authority.** Each individual executing this Agreement on behalf of any Party expressly represents that he/she has authority to do so, and thereby to bind the Party for which he/she signs, to the terms of this Agreement.

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

19.18 **Limitations.** The Parties are aware that there are constitutional and statutory limitations on the authority of Texas A&M (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on Texas A&M’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’

fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on Texas A&M except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by Texas A&M nor any other conduct, action, or inaction of any representative of Texas A&M relating to this Agreement constitutes or is intended to constitute a waiver of Texas A&M's or the state's sovereign immunity to suit.

19.19 Best Value Procurement. As permitted by Texas Education Code 51.9335, other institutions of higher education may utilize this Agreement as a best value method to procure the services provided herein, subject to Chartwells express written agreement upon financial and other terms to be agreed upon by Chartwells and such other institutions.

19.20 Compliance with the Law. The Parties shall fully comply with their respective obligations under all applicable, federal, state and local laws, regulations, codes, ordinances and orders. In addition, each Party shall implement programs, policies and procedures necessary to promote compliance with applicable laws, regulations, codes, ordinances and orders. In the event of a felony criminal charge or conviction of any officer or director of either Party, such Party shall notify the other Party within five (5) days of such criminal charge or conviction.

19.21 Ethics. The Parties shall implement programs, policies and procedures necessary to promote compliance with their respective Codes of Ethics or ethics policies, regulations, rules or procedures. The Parties shall also provide each other copies of their internal Codes of Ethics within ten (10) days of the final execution of this Agreement. Further, the Parties shall provide each other copies of any revisions to such codes, policies, regulations and rules within thirty (30) days of the effective date of the revision. In the event of a breach by a Party's employees of the requirements of its respective Code of Ethics or ethics policies, regulations, rules or procedures relating specifically to Texas A&M, such Party will notify the other Party of such breach within five (5) days of discovery thereof.

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

IN WITNESS WHEREOF, the Parties have hereto set their hands and seals as of the day and year first above written.

Texas A&M University

By: 
R. Bowen Loflin
President

Compass Group USA, Inc. by and
through its Chartwells Division

By: 
Steven M. Sweeney
President & CEO

Date: 9 August 2012

Date: 8/9/12

EXHIBIT A – DINING SERVICE FACILITIES

NORTH CAMPUS:

Sbisa Dining Center
Bernie's Café
The Underground Food Court
Pi R Square
The Daily Grind
The Azimuth Café
The Sidewalk Café

SOUTH CAMPUS:

Duncan Dining Center
ChopStix
The Commons
The Grill at the Pavilion
Poor Yorick's Coffee House

CENTRAL CAMPUS:

Rev's American Grill
Ciao
Panda Express
Pile On
Smokin
Simply Fresh – Grab 'n Go
Cabo
Cool
The Sidewalk Café
The University Club

WEST CAMPUS:

Ag Café
Time Out Sports Deli
Critical Care Café
41st Club
West Side Exchange

EXHIBIT B – PERFORMANCE MEASUREMENT EVALUATION TOOL