FOOD SERVICE AGREEMENT

FOR THE PERIOD JANUARY 1, 2008 THROUGH DECEMBER 31, 2012

BETWEEN

KEAN UNIVERSITY ("UNIVERSITY")

AND

GOURMET DINING SERVICES ("CONTRACTOR")

BID K07-3-27-5

FOOD SERVICE AGREEMENT

THIS AGREEMENT made the 1st day of January, 2008, by and between Kean University, a public institution of higher education in the State of New Jersey, having its principal address at 1000 Morris Avenue, Union, New Jersey 07083 ("University") and Gourmet Dining LLC, a New Jersey Limited Liability Company, having its principal address at 285 Madison Avenue, Madison, NJ 07940 ("Contractor") expresses the terms, conditions, responsibilities and understandings between the University and Contractor for the delivery of food services to students, faculty, staff and visitors on the University campus.

1. **CONTRACTOR RESPONSIBILITIES**. The Contractor shall be required to assume sole responsibility for all work to be completed as required by this Agreement.

2. **SCOPE OF SERVICES**. The Contractor, for and in consideration of the concession to provide food services and management, agrees to do and perform all work and labor required to furnish and deliver all goods, materials and/or services in accordance with this Agreement dated January 1, 2008.

3. **CONTRACT DOCUMENTS**. The following documents are annexed hereto, incorporated herein and made a part of this Agreement:

Exhibit "A" - Kean University Request for Proposal for Food Service Management and Operations Contract dated March 28, 2007; and

Exhibit "B" - Contractor's Food Service Proposal dated August 27, 2007.

In the event of an inconsistency between the terms of this Agreement and the Contractor's proposal, the terms of this Agreement shall govern. In the event of an inconsistency between the terms of this Agreement and the Request for Proposal, the terms of this Agreement shall govern. In the event of an inconsistency between the terms of the Request for Proposal and the Contractor's proposal, the terms of the Request for Proposal shall govern.

4. **CONTRACTOR EMPLOYEES**. It is understood and agreed that the Contractor is an independent contractor and not an employee of the University, nor are the employees of the Contractor to be considered employees of the University.

5. **TERM OF AGREEMENT**. Services shall be provided under this Agreement during the period from January 1, 2008 through December 31, 2012. The initial term of this Agreement is for a period of one (1) year and may be extended for four (4), one (1) year renewal terms with the consent of both parties. Should the University decide to renew this Agreement, notice will be given to the Contractor no later than ninety (90) days prior to the termination date of the initial contract term and any subsequent renewal contract term. The Contractor shall indicate its acceptance in writing within thirty (30) days after the notice of each proposed contract renewal. In the event the Contract is extended after the expiration of the initial contract term and subsequent renewal terms, all the original contract terms shall remain in effect for the extended period. In such case, a new performance and payment bond in the amount of Two

Million Five Hundred Thousand Dollars ($2,500,000.00) shall be provided by the Contractor for the extended or transition period.

6. **LICENSES AND PERMITS.** The Contractor must meet all applicable state and federal requirements for operating and doing business in the State of New Jersey including, but not limited to, maintaining compliance with Affirmative Action laws, as per provisions of Chapter 127, Public Laws of 1975, and prevailing wage rates as per provisions of Chapter 150 of the Laws of 1963 as amended by Chapter 64 of the laws of 1974, as determined by the Department of Labor & Industry.

7. **INSURANCE.** The Contractor shall assume all responsibility for its actions and those of anyone else working for it while engaged in any activity connected with this Agreement. The Contractor shall procure and maintain, at its sole cost and expense, during the entire period of this Agreement, the types of insurance specified herein. All insurance shall be procured from reputable insurance carriers authorized to do business in the State of New Jersey which maintain an A.M. Best rating of A- (VII) or better. In no event shall work be performed until the required evidence of insurance has been furnished. The University reserves the right to require the Contractor to furnish certified copies of the original policies of all insurance required under this Agreement any time upon ten (10) days prior written notice to the Contractor. If the Contractor fails to obtain or maintain the required insurance, the University shall have the right to treat such failure as a material breach of contract and to exercise all appropriate rights and remedies. The Contractor is responsible for renewing all types of insurance specified in this Agreement before the expiration date of any policy required hereunder. The insurance shall provide for at least thirty (30) days prior written notice to be given to the University in the event coverage is materially changed, not renewed, reduced or canceled. The University, State of New Jersey and the New Jersey Educational Facilities Authority shall be named as additional insureds on all policies required hereunder, except the Workers' Compensation and Employer's Liability. All liability policies shall provide the "occurrence" type of coverage. Evidence of current insurance coverage shall be provided in the form of a certificate which shall be submitted to the University upon execution of this Agreement and no later than ten (10) days prior to January 1 of each and every year of this Agreement. The certificate shall expressly name Kean University, the State of New Jersey and the New Jersey Educational Facilities Authority as additional insureds. A Certificate of Insurance for Workers Compensation, together with a properly executed endorsement for cancellation notice, shall also be furnished.

The Contractor shall provide the following types of insurance coverage:

A. Worker's Compensation Insurance as required by the laws of the State of New Jersey and applicable federal law to protect the employees of the Contractor and any subcontractor who will be engaged in the performance of this Agreement. This insurance shall include Employers' Liability coverage with a minimum limit of liability of one million dollars ($1,000,000) for personal injury, each occurrence; a minimum limit of liability of one million dollars ($1,000,000) for disease, each employee; and, a minimum limit of liability of one million dollars ($1,000,000) for disease, aggregate limit.

B. Commercial General Liability policy as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the scope of coverage. The policy shall include an endorsement (broad form) for contractual liability covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement. Coverage for bodily injury and property damage claims arising out of the acts of the Contractor and any subcontractors shall be included. Kean University, the State of New Jersey and the New Jersey Educational Facilities Authority shall be named as additional insureds. Limits of liability shall be a minimum of one million dollars ($1,000,000) per occurrence for bodily injury liability; a minimum of one million dollars ($1,000,000) per occurrence for property damage; a minimum limit of two million dollars ($2,000,000) product/completed operations aggregate; and, liquor liability coverage with minimum limits of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate. A "per location endorsement" shall be included, so that the general aggregate limit applies separately to the location that is the subject of this Agreement.

C. Comprehensive automobile policy covering owned, non-owned and hired vehicles with minimum limits of one million dollars ($1,000,000) per person; one million dollars ($1,000,000) per occurrence for bodily injury liability and one million dollars ($1,000,000) per occurrence for property damage liability. The policy shall include Kean University, the State of New Jersey and the New Jersey Educational Facilities Authority as additional insureds.

D. Excess liability, umbrella insurance form, applying excess over the primary commercial general liability, comprehensive automobile liability and employers' liability insurance. The minimum limits of excess liability insurance shall be five million dollars ($5,000,000) per occurrence; five million dollars ($5,000,000) general aggregate; and, five million dollars ($5,000,000) products/completed operations.

E. Property Insurance shall be maintained by the Contractor to keep its property insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance. The coverage shall also insure against business interruption and extra expense losses. The Contractor agrees to waive its rights and the rights of its subsidiaries and affiliates, to recover from Kean University, the State of New Jersey and/or the New Jersey Educational Facilities Authority for damages intended to be covered by a standard broad form property insurance policy including business interruption and extra expense coverage.

Each policy of insurance shall contain an endorsement as follows: "It is understood and agreed that the Contractor's Insurance Company shall notify the University, in writing, thirty (30) days in advance of the effective date of any material change, non-renewal, reduction or cancellation of this policy."

All required insurance coverage must be in effect not later than 12:01 a.m. at the start of the Agreement and remain in effect for a minimum of 90 days following termination or expiration of the Agreement.

8. **PERFORMANCE SECURITY.** Upon the execution of this Agreement, the Contractor shall provide Kean with a performance and payment bond in the amount of Two Million Five Hundred Thousand Dollars ($2,500,000.00). The performance security shall consist of a certified or cashier's check drawn to the order of the University, or an individual or annual performance bond issued by an insurance or surety company authorized to do business in the State of New Jersey. The performance bond shall be effective as of January 1, 2008 and guarantee the Contractor's performance of this Agreement.

9. **NOTICES AND REQUIRED DOCUMENTATION.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

As to Contractor:

Ben Aiello
President
Gourmet Dining LLC
285 Madison Avenue
Madison, NJ 07940

As to Kean University:

Philip Connelly
Vice President of Administration & Finance
Kean University
1000 Morris Avenue
Union, NJ 07083

10. **EVALUATION OF AGREEMENT SERVICES.** During the term of this Agreement, the University President (the "President") or designated representative shall have the right to form a Food Service Committee to appraise and evaluate the services carried out under this Agreement. The Contractor or its representative shall be required to attend Food Service Committee meetings. The President or the President's authorized representative shall have the power to direct the activities of the Contractor. The Contractor or the Contractor's authorized representative must meet as requested by the University. The President or the President's authorized representative shall discuss with the Contractor the food services provided pursuant to this Agreement, including, but not limited to, types of food, variety and quality, sanitation and maintenance of property. The Contractor shall be responsible to maintain maximum efficiency and good public relations in the operation of services awarded pursuant to this Agreement. The President or the President's authorized representative shall have the right to make reasonable changes with regards to food service and facilities, and the Contractor agrees to comply with

these changes. All authorized representatives of the University shall have the full right to access of all areas of Contractor operations at any and all times.

11. **CONTRACT TRANSITION PERIOD**. In the event that the Agreement is terminated either by contract expiration or by early termination by the University, it shall be incumbent upon the Contractor to continue all services hereunder until new services can become completely operational. At no time shall this continuation of services extend more than ninety (90) days beyond the expiration date of the existing Agreement, unless otherwise agreed upon by the parties in writing.

12. **SUSPENSION OF WORK.** The University may at any time for valid reason direct the Contractor to suspend work under this Agreement for a specific period of time. Such order shall be given by at least ten (10) days notice in writing which shall specify the period during which work shall be stopped. The Contractor shall be paid up until the stop order. The Contractor, unless terminated, shall resume work upon the date specified in the stop work order, or upon such other date as the University may thereafter specify in writing. The period during which work shall have been stopped shall be deemed added to the Contractor's contractual term.

13. **DISCRETIONARY EVENTS OF DEFAULT**. Each of the following shall be an event of default under the Agreement, which may, at the sole discretion of the University, constitute a basis to terminate the Agreement if the Contractor fails to cure the default:

A. failure by Contractor to comply with any provision of this Agreement; or

B. failure by Contractor to meet its financial obligations to the University and/or to pay suppliers in accordance with its contracts with those suppliers; or

C. falseness or inaccuracy of any warranty or representation of Contractor contained in the Agreement or in any other document submitted to the University by the Contractor.

14. **MANDATORY EVENTS OF DEFAULT**. Each of the following shall be an event of default under the Agreement which may not be cured by the Contractor and will be mandatory grounds for termination of the Agreement:

A. any misappropriation of any monies provided under this Agreement or failure to notify the University upon discovery of any misappropriation; or

B. a violation of federal, state or local law by the Contractor or Contractor's senior management, directly or indirectly relating to the provision of services under the Agreement, or which threatens in any way, in the sole judgment of the University, the performance of the Agreement in accordance with its terms; or

C. the declaration of bankruptcy by the Contractor.

15. **TERMINATION FOR DEFAULT.** The University shall, by written notice of default to the Contractor, terminate the whole or any part of this Agreement if the Contractor commits any act identified in the "Mandatory Events of Default" clause contained herein. In addition, the University may, by written notice of default to the Contractor, terminate the whole or any part of this Agreement if the Contractor commits any act identified in the "Discretionary Events of Default" clause contained herein and if the Contractor does not cure such act of default within a period of ten (10) days (or such longer period as the University may authorize in writing) after receipt of notice from the University specifying such act.

If the Agreement is terminated in whole or in part for default, the University may procure, upon such terms and in such manner as the University may deem appropriate, items and/or services similar to those so terminated.

The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Any monies due the Contractor prior to termination shall be paid to Contractor in accordance with the terms of this Agreement.

16. **TERMINATION FOR CONVENIENCE.** In addition to the University's rights to terminate this Agreement for mandatory or discretionary events of default, the Contractor's performance may be terminated by the University in accordance with this clause in whole, or in part, whenever the University determines that such termination is in the best interest of the University. Any such termination shall be effected upon sixty (60) days prior written notice delivered to the Contractor specifying the extent to which performance of work is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by the University, the Contractor shall: a) stop work under the Agreement on the date and to the extent specified in the notice of termination; b) take no further action except as otherwise may be directed by the University; and, c) terminate all orders and/or subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.

Any monies due the Contractor prior to termination shall be paid to Contractor in accordance with the terms of this Agreement.

17. **DAMAGES FOR NON-PERFORMANCE.** In the event the Contractor's performance is terminated by the University, the University shall authorize the Agreement services to be performed by any available means. The difference between the actual cost paid for the replacement services and the bid of the defaulting Contractor shall be deducted from any monies due hereunder. If the cost of replacement service is greater than any monies due Contractor under this Agreement, the Contractor shall pay to the University the difference between replacement cost and the amount deducted from any monies due to the Contractor.

18. **INDEMNIFICATION**. The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless Kean University, the State of New Jersey and their trustees, directors, officers, agents, servants and employees, from and against any and all claims, demands, suits, actions, recoveries, judgments and costs, and expenses in connection therewith on account of the loss of life, illness, injury, damage to or loss of property, of any person or persons, whatsoever, which shall arise from or result directly or indirectly from: (1) the work, service or materials provided under this Agreement; or (2) any failure to perform the Contractor's obligations under this Agreement. The Contractor's obligations under this indemnification clause or any improper or deficient performance of the Contractor's obligations are not limited by, but are in addition to, the insurance obligations contained in this Agreement. Further, the provisions of this indemnification clause shall in no way limit the obligations assumed by the Contractor under this Agreement, nor shall they be construed to neither relieve the Contractor from any liability nor preclude the University from taking any other actions available to it under any other provisions of this Agreement or at law. The indemnification obligations hereunder shall survive the completion or termination of this Agreement.

19. **ENVIRONMENTAL INDEMNIFICATION CLAUSE**. The Contractor shall conduct all activities in compliance with all applicable Federal, State and local laws, rules and regulations designed to prevent or control the discharge of substances into the land, water and air and to protect individual health and safety. The Contractor shall indemnify, defend and save harmless Kean University, the State of New Jersey and their trustees, directors, officers, agents, servants and employees, from and against any and all claims, demands, suits, actions, recoveries, judgments and costs, and expenses in connection therewith on account of the loss of life, illness, injury, damage to or loss of property, of any person or persons, whatsoever, which shall arise from or result directly or indirectly from or alleged to have arisen from its violation of any such environmental, health or safety laws, rules or regulations whenever such suits, actions, claims or proceedings shall be commenced, or whenever such costs are accrued, except for any violations, if any, at the University's campus or facilities existing prior to the Contractor's activities. The Contractor shall take reasonable and necessary precautions to prevent the discharge of hazardous substances, including asbestos and petroleum products, onto University property or into the environment, including the air. Failure to comply will be considered grounds for default, and the University may cancel the Agreement in the "Termination for Default" clause contained herein. The indemnification obligations hereunder shall survive the completion or termination of this Agreement.

20. **PRICING**. The Contractor agrees that the prices set forth in its Food Service Proposal dated August 27, 2007 are firm for the first year of the Agreement and thereafter may be changed only with the prior written approval of the University.

21. **PAYMENT OF COMPENSATION/FINANCIAL PROPOSAL FORM**. All compensation paid by the University to the Contractor shall be in accordance with the Contractor's Financial Proposal Form contained in Exhibit "B" and shall not be modified during the term of the Agreement. The Contractor's Financial Proposal Form is based on providing services outlined in the Proposal and complies with all federal and state laws, particularly as they relate to maintaining the tax exempt bond status of the University. Since the facilities to be

occupied by the Contractor are financed with the proceeds of tax-exempt bonds, this Agreement shall comply with the requirements of Rev. Proc. 97-13.

22. **CAPITAL EQUIPMENT INVESTMENT**. In addition to the above commissions, the Contractor shall purchase and install equipment totaling $728,486.00 in the University dining locations. Said capital equipment investment shall be completed during the first year of this Agreement. Upon installation, the capital equipment shall become the property of the University.

23. **INSTALLATION AND MAINTENANCE OF POINT-OF SALE EQUIPMENT.** The University agrees to install point-of-sale terminals at all food service locations at the time of the commencement of this Agreement. The placement and location of such terminals shall be determined by the University.

24. **HOURS OF OPERATION.** The Contractor shall provide food services and management in accordance with the following schedule:

A. Standard Operating Hours during Fall and Spring Semesters

1. University Center Cougar's Den/Coffee House

Monday - Thursday	7:00 a.m. - 5:00 p.m.
Friday – Sunday	Closed

2. University Center Snack Bar/Boar's Head Deli

Monday - Thursday	11:00 a.m. - 5:00 p.m.
Friday	Closed
Saturday	1:30 p.m. - 9:00 p.m.
Dinner Meal Plan Equivalency	7:00 p.m. - 8:00 p.m.
Sunday	1:30 p.m. – 9:00 p.m.
Dinner Meal Plan Equivalency	7:00 p.m. - 8:00 p.m.

3. Downs Hall

Monday - Friday	
Breakfast	7:00 a.m. - 9:30 a.m.
Lunch	11:00 a.m. - 1:30 p.m.
Light Lunch Fare	1:30 p.m. – 2:30 p.m.
Dinner	4:15 p.m. – 8:30 p.m.
Dinner – Friday	4:15 p.m. – 7:00 p.m.
Saturday, Sunday and Holidays	
Brunch	10:00 a.m. – 1:30 p.m.
Dinner	4:15 p.m. – 7:00 p.m.

4. University Center Cafeteria

Monday - Thursday	7:00 a.m. – midnight
Dinner Meal Plan Equivalency	8:30 p.m. – 9:30 p.m.
Friday	7:00 a.m. - 9:00 p.m.
Dinner Meal Plan Equivalency	7:00 p.m. – 8:00 p.m.
Saturday - Sunday	Closed

5. University Center Ice Cream Parlor

Monday – Thursday	11:00 a.m. – 7:00 p.m.
Friday	11:00 a.m. – 3:00 p.m.
Saturday – Sunday	Closed

6. Starbucks Kiosk – CAS Building

Monday – Thursday	7:30 a.m. – 8:00 p.m.
Friday	7:30 a.m. – 2:00 p.m.
Saturday - Sunday	Closed

7. University Center Convenience Store

Monday – Thursday	9:00 a.m. – 7:00 p.m.
Friday	9:00 a.m. – 4:00 p.m.
Saturday	8:00 a.m. – 4:00 p.m.
Sunday	Closed

B. <u>Miscellaneous Operating Hours</u>

1. University Closure

Board Plan	11:00 a.m. - 1:30 p.m.
	4:45 p.m. - 7:00 p.m.
All other food service locations	Closed

2. Delayed Opening

Cafeteria	8:30 a.m. - 7:00 p.m.
Snack Bar	3:00 p.m. - 11:00 p.m.
Coffee House	Closed
Ice Cream Store	11:00 a.m. - 7:00 p.m.
Board Plan	Regular Schedule
Starbucks Kiosk – CAS Building	11:00 a.m. – 8:00 p.m.
Convenience Store	11:00 a.m. – 7:00 p.m.

3. Christmas Break

Cafeteria (Monday - Friday)	8:30 a.m. - 3:00 p.m.

Cafeteria (Saturday & Sunday)	Closed
Board Plan	Closed
Starbucks Kiosk – CAS Building	Closed
Convenience Store (Monday- Friday)	9:00 a.m. – 3:00 p.m.
Convenience Store (Saturday – Sunday)	Closed

4. Spring Break

Cafeteria (Monday - Friday)	8:30 a.m. - 3:00 p.m.
Cafeteria (Saturday & Sunday)	Closed
Board Plan	Closed
Starbucks Kiosk – CAS Building	Closed
Convenience Store (Monday – Friday)	9:00 a.m. – 3:00 p.m.
Convenience Store (Saturday – Sunday)	Closed

5. Summer Session I

Cafeteria (Monday - Thursday)	8:30 a.m. - 3:00 p.m.
Cafeteria (Friday - Sunday)	Closed
Coffee House	Closed
Board Plan	Closed
Starbucks Kiosk – CAS Building	Closed
Convenience Store (Monday – Thursday)	9:00 a.m. – 3:00 p.m.
Convenience Store (Friday, Saturday & Sunday)	Closed

6. Summer Session II

Cafeteria (Monday - Thursday)	7:30 a.m. - 7:00 p.m.
Cafeteria (Friday)	7:30 a.m. - 3:00 p.m.
Cafeteria (Saturday - Sunday)	Closed
Coffee House	Closed
Board Plan	Closed
Starbucks Kiosk – CAS Building	Closed
Convenience Store (Monday – Thursday)	9:00 a.m. – 3:00 p.m.
Convenience Store (Friday)	10:00 a.m. – 2:00 p.m.
Convenience Store (Saturday – Sunday)	Closed

25. **MEETING.** The Contractor or his authorized representatives shall meet regularly with the University Vice President for Student Affairs, Director of Business Services and/or the Food Service Committee to discuss the food services, including but not limited to, types of food and food quality, and cooperate at all times to maintain maximum efficiency and good public relations in the operation of the services.

26. **USE OF DINING AREAS.** All authorized representatives of the University shall have the full right of access to all of said premises at any and all times. It is further understood that the University reserves the right to use the dining areas from time to time for

such purposes as registration of students, classes for students, conferences, testing, dances, or other uses not related to food service. Appropriate set-up, clean-up and any loss or damage associated with such use shall be undertaken and borne by the University and shall not be the responsibility of the Contractor.

27. **CATERED FUNCTIONS AND EVENTS.** The Contractor shall provide a full range of catering services for University events, when requested, on any day or evening during the term of this Agreement at any location on campus. The Contractor shall not book any catered event in a public scheduled space or any other campus space without prior authorization from the Director of the University Center. Among the services required, but not limited to, are coffee service, continental breakfasts, full breakfasts (served and buffet style), hot and cold lunches (served and buffet style), beverage and snack service, buffet dinners, served dinners, special theme dinners, later night suppers, dessert hours, and full scale gala events.

28. **AUDIT, INSPECTION AND RECORD RETENTION.** The Contractor shall maintain accounting records and all other records pertaining to the Contractor's performance of this Agreement and make the records available to the University during business hours throughout the term of the Agreement and for seven (7) full years after the completion of the Agreement.

The Contractor shall further permit authorized representatives of the University and the State of New Jersey to inspect and photocopy all project work, materials, payroll and all data and records of the Contractor relating to its performance and its subcontracts under this Agreement from the date of the Agreement and for seven (7) years after the completion of the Agreement.

The periods of access and examination described above, for records which relate to a) appeals under the "Disputes" clause of this Agreement, b) litigation or the settlement of claims arising out of the performance of this Agreement, or c) costs and expenses of this Agreement as to which exception has been taken by the University or the State of New Jersey or any of their duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

29. **STANDARDS PROHIBITING CONFLICTS OF INTEREST.** The following prohibitions on vendor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No.189 (1988):

A. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13d-13i., of any such officer or employee, or partnership, firm or corporation, with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13d-13g.

B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

C. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13d-13g.

Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actual or appearance of a conflict of interest.

D. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner.

E. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

F. The provisions cited above in paragraph 27a. through 27e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 27c.

30. **EEO/AFFIRMATIVE ACTION**. The Contractor agrees that it does not discriminate in the hiring or promotion of any minorities, as designated by the Equal Employment Opportunity Commission of the United States of America, or the Department of Civil Rights of the State of New Jersey, and that it does not discriminate against any person or persons on the basis of race, religion, age, color, sex, national origin, sexual orientation or handicap. The Contractor further agrees to abide by all anti-discrimination laws, including but not limited to, those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued there under.

In addition, the Contractor agrees to complete a Mandatory Language for Professional Agreements form and a State of New Jersey Affirmative Action Employee Information Report (AA-302 form). However, if Contractor maintains a current Letter of Federal Approval, or a current Certificate of Employee Information Report Approval as issued by the New Jersey Department of Treasury, it may be submitted in lieu of the AA-302 form indicated above.

31. **NEW JERSEY BUSINESS REGISTRATION CERTIFICATE**. The Contractor agrees that it will comply with the provisions of P.L. 2004, c. 57, which requires all businesses having been awarded a public contract by a State college or university to register with the New Jersey Department of Treasury. The Contractor shall be required to provide Kean with proof of business registration in accordance with P.L. 2004, c. 57, upon the execution of this Agreement.

32. **TAXES AND APPLICABLE LAWS**. The Contractor agrees to pay any taxes resulting from this Agreement. The Contractor further agrees to perform the services in this Agreement in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and orders.

33. **AVAILABILITY OF FUNDS**. The University's obligation hereunder is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the University for payment of any money shall arise unless and until funds are made available each fiscal year to the University by the Legislature.

34. **DISPUTES**. Any dispute arising during the course of this Agreement which is not resolved by agreement of the parties shall be decided in writing by the authorized representative of the University. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the University's Vice President of Administration and Finance. In connection with any such appeal, the Contractor shall be offered an opportunity to be heard any present any information in support of its position. The decision by the University's Vice President of Administration and Finance shall be binding upon the Contractor and the Contractor shall abide by the decision. Any action by the Contractor resulting from the University's final administrative decision shall be governed by the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) as identified in the Governing Law clause herein.

35. **GOVERNING LAW**. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, including without limitation, the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.). The parties agree that pursuant to the New Jersey Contractual Liability Act, venue and jurisdiction regarding any matter pertaining to this Agreement shall be in the Superior Court of New Jersey, Law Division, Union County, and consent to same. The parties waive any claim to a venue or jurisdiction different from the foregoing.

36. **ASSIGNMENT**. This Agreement, or any part thereof, shall not be subcontracted or assigned by the Contractor, without the specific prior written consent of the University. Any attempted assignment without such prior written permission shall be null and void.

37. **BINDING EFFECT**. This Agreement is to be binding upon the University, its successor or successors, and upon the Contractor, its successor or successors.

38. **ENTIRE AGREEMENT**. This Agreement is the entire understanding and agreement between the University and the Contractor relating to the subject matter herein, and supersedes any and all such other agreements and understandings relating to the subject matter herein.

39. **AMENDMENT**. This Agreement may be amended only by a writing executed by both parties.

40. **SEVERABILITY**. If any material provision herein is held invalid or unenforceable, this Agreement shall be terminated unless the parties agree to a new provision or terms within thirty (30) days.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the date set forth above. The representative signing on behalf of the Contractor shall have the authority to contractually bind the Contractor.

CONTRACTOR

ATTEST:

GOURMET DINING LLC

By: ______________________

Ben Aiello
President

ATTEST:

KEAN UNIVERSITY

By: ______________________

By:

Philip Connelly
Vice President of
Administration and Finance