

FOOD SERVICE CONTRACT

REVISED

THIS AGREEMENT, made and entered into this 16th day of October, 2008, by and between **Imperial Valley College**, 380 East Aten Road, Imperial, CA 92251, hereinafter called "College" and **Chips and Salsa**, hereinafter called "Contractor".

ARTICLE I - TERM

1.1 Contract Term: The term of the contract shall be for three (3) years starting on July 1, 2008 and ending on June 30, 2011. The parties shall have the option to renew this contract on a year-to-year basis after the three (3) year period, which may be exercised by mutual written agreement entered into not less than sixty (60) days in advance of the expiration of the term.

1.2 Termination:

1.2.1 During the term hereof, this contract may be terminated upon a default by the other party in the performance of an obligation or upon a material breach of any of the terms or conditions of this agreement by the other party if such other party fails to cure such default in performance or material breach within thirty (30) days after service of notice upon it of such default or breach.

1.2.2 After the expiration of the initial three year term, and during any one year extensions, the contract may be terminated by either party by giving sixty (60) days written notice.

ARTICLE II - SCOPE AND RESPONSIBILITIES

2.1 Purpose: This agreement sets forth the terms and conditions under which the College retains the Contractor to manage and operate the College's food service operations at Imperial Valley College.

2.2 Scope: Contractor shall provide its expertise and services to the College for the total operation of the institution's food services plus take day to day general responsibility for the general management of the food service department. Accordingly, Contractor shall purchase, prepare, and serve food, food products, and beverages in the Cafeteria. Foods and beverages shall be prepared in accordance with standard menu and nutritional requirements. The College reserves to itself the right and responsibility to review and evaluate all menus as to nutritional value and appropriateness.

2.3 Catering: Contractor may be requested to provide food service for special events, luncheons, etc., as requested by the College.

ARTICLE III - MENU, PRICING AND SCHEDULING

3.1 Contractor and the College shall agree on menu items and their retail price at the signing of the contract, which thereafter shall not be changed without the written approval of the College. Other items may be added provided their prices have been approved by the College.

3.2 Contractor shall perform and operate on a schedule to be provided based upon the scholastic schedules and needs and times mutually agreed upon by both parties. The needs of the College students shall prevail over any conflicting schedules such as private catering or conference activities. When not in conflict with College scheduling,

the College encourages Contractor's support of catering and conference activities, subject to the Civic Center Act and prior approval of the College.

3.3 Contractor will post and distribute weekly menus and special flyers to advertise the cafeteria food menu and daily specials to also include upcoming specials on flyers, table tents, and banners.

3.4 **Hours of Operation:** The hours of operation are:

Normal Operation

Monday - Thursday 7:30 a.m. - 9:00 p.m.

Friday 7:30 a.m. - 5:00 p.m.

Saturday 7:30 a.m. - 1:00 p.m.

Summer Hours

(During Summer School Session)

Monday - Thursday 7:30 a.m. - 7:00 p.m.

(Other Summer hours when not in session)

Monday-Friday 7:30 a.m. - 2:00 p.m.

Winter Intersession Hours

Monday - Thursday 7:30 a.m. - 7:00 p.m.

Friday 7:30 a.m. - 5:00 p.m.

Revisions in the hours of service will be mutually agreed upon between the College and Contractor. It is anticipated that food services on Friday evenings and Saturday will be requested when course offerings expand to those days and times.

ARTICLE IV - PERSONNEL

4.1 Contractor shall provide at all times, adequate and expert managerial and administrative supervision for its employees in the Service Area. Contractor shall employ a manager who shall be assigned to the College account on a full-time basis.

4.2 Contractor agrees at all times to maintain an adequate staff of experienced and qualified employees. For efficient service to the College community, Contractor agrees to adequately staff all operations so that customers will be served promptly. Contractor staff will not be permitted to solicit gratuities.

4.3 Contractor agrees that all employees shall be attired in a standard food service. Uniforms shall be kept clean and neat at all times. Employees are expected to wear appropriate nametags, hair covering, gloves, etc., while engaged in food preparation and service.

4.4 **Non-discrimination:** Neither party to the agreement shall discriminate because of race, color, religion, sex, age, national origin, sexual orientation, marital status, disability (physical or mental, real or perceived), or status as a Vietnam veteran, as defined by applicable governmental statute, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning food service personnel. This fundamental rule of conduct shall be clearly communicated to all employees, prospective employees, and the community at large.

4.5 **Health Examinations:** Contractor shall arrange for all employees on duty at the operation to submit to periodic health examinations, as frequent and as stringent as required by law, and will submit acceptable evidence of compliance with all health regulations to the College upon request.

4.6 **Student Employment:** The Contractor will participate in our College Workstudy Program by employing eligible college students by mutual agreement between the College and the Contractor.

4.7 **All employees will be employed by Contractor, and will not be employees of the College.**

ARTICLE V - COMMUNICATION WITH THE COLLEGE COMMUNITY

5.1 Contractor's management will meet regularly with the Vice President of Business Services, or his designee, to review services, discuss new initiatives and resolve concerns. Contractor shall inform the College of the home telephone number of the Food Service Manager.

5.2 The Contractor will provide a suggestion box and posted written responses to reasonable suggestions. The Contractor will conduct customer satisfaction surveys at least once per year to obtain feedback on cafeteria and catering services. The College shall review and comment on the survey instrument prior to its release. The Contractor will submit a written report within one month following the evaluation describing the survey findings and indicating any changes needed in the food service based on the evaluations.

The College will also conduct surveys, as it deems appropriate to obtain feedback from students and staff. The Campus Operations Committee shall compile the information gathered and communicate the results to the Contractor. Contractor shall be alert to, and take initiative to implement changes as indicated by the survey(s). Substantive indications of poor performance by Contractor may be cause for the College not to renew the Contract. Additionally, Contractor must advise the College of its plans to remedy substantive shortcomings. Plans must be implemented within a reasonable time. The College will meet with Contractor to fully discuss survey results and the ramifications on Contractor's operation.

ARTICLE VI - FISCAL

6.1 Contractor shall be responsible for the collection and payment of all taxes on cash and charge sales, except where the customer is able to provide evidence of a valid tax exemption.

6.2 **Purchasing Practice:** In order to assure that prices for the students, faculty and staff members remain as low as possible, Contractor will make every attempt to purchase all foods, supplies and/or equipment as competitively as possible without sacrificing quality. No College involvement in the purchasing process is contemplated; the College, however, reserves to itself the right to inspect invoices and/or price lists for price comparison purposes.

6.3 On an annual basis, Contractor, with the participation and cooperation of the College's designated representative, will conduct an inventory of small equipment on hand, and Contractor will assume the mutually agreed upon condition and count of these goods. Conversely, upon expiration or termination of the Agreement, a similar inventory will be conducted and Contractor will be required to maintain the beginning inventory or bring the inventory back to the beginning level.

6.4 Contractor will operate the College food service on a profit and loss basis with no cost to the College.

ARTICLE VII - FACILITIES AND EQUIPMENT

7.1 The College shall provide the Contractor with facilities for food and beverage services, including adequate dry, refrigerated, and freezer storage areas, and sanitary toilet facilities for employees, completely equipped and ready to operate. Office space for the Food Service Manager, equipped with standard office equipment, will be provided adjacent to the operation area. Except as may be specified in writing by the Contractor prior to commencement of operations, the facilities and equipment provided by the College shall be deemed to be complete, operable, and adequate for effective performance under this Agreement.

7.2 Contractor may provide and install, at no expense to the College, additional equipment after first receiving approval of the College's representative. Equipment so provided by Contractor shall remain the property of Contractor regardless of the manner in which said property is attached or affixed to the real property. Contractor shall have the

right to remove, or on the College's request, sell to the institution at fair market value, such equipment within thirty (30) days after the expiration or termination of this Agreement subject to the other provisions of the Agreement.

7.3 The College shall have the right to install any needed equipment or to make alterations to the facilities in a manner compatible with existing facilities. Contractor and the College shall each be responsible for compliance with all federal, state, and local health and safety regulations with respect to equipment, other facilities, and space over which that party has operating control.

7.4 College shall perform maintenance and repairs on the equipment provided by the College at its own expense. The Contractor shall give College notice of maintenance and repair needed in sufficient time to allow for College to effect such repairs and maintenance on a timely basis.

7.5 College shall contribute toward the purchase of two new cash registers. The contribution shall not exceed Three Thousand Five-Hundred Dollars (\$3,500.00). Prior to the purchase, which shall occur in fiscal year 2008/2009, Contractor shall provide to the Vice President for Business Services a pricing invoice for the two cash registers.

7.6 The College and the Contractor will conduct a joint inventory of all small wares, china, silverware, etc. Contractor will maintain the supply of such items as direct cost of operation. Contractor will replace all flatware and chinaware provided by the College lost due to breakage, negligence of contractor or their employees. Contractor and the College shall jointly conduct an inventory of all equipment at least annually, at such times as may be mutually agreed, and on termination or expiration of this Agreement. Contractor shall replace or pay for all missing or damaged items it is responsible for in such annual inventories, except for normal wear and tear.

7.7 In the event of termination or expiration of the Agreement, Contractor shall allow its successor (or the College designee) reasonable access to the premises during the thirty (30) days preceding the expiration date of the Agreement.

7.8 Contractor shall, as a direct cost of operation, maintain standards of housekeeping and sanitation in all areas under its responsibility to the satisfaction of the College. Cleaning and sanitation of the food preparation is the responsibility of Contractor. Failure on the part of Contractor to maintain an acceptable city or state health department rating shall constitute a default on the part of Contractor and shall give the College the right to terminate the Agreement upon the giving of thirty (30) days written notice provided, however, that such default may be cured during such thirty (30) day period, in which case the notice shall be null and void and the Agreement shall remain in full force and effect.

7.9 The College assumes the responsibility for painting the walls and ceilings, outside building and replacement of carpeting, draperies, and window coverings.

7.10 **Access:** The College shall have full access at all times to the food service preparation areas and equipment with or without prior notice.

7.11 Contractor will manage the College food service in accordance with the State of California health laws and with proper training of employees.

ARTICLE VIII - OPERATIONAL COSTS AND RESPONSIBILITIES

8.1 Contractor will assume the cost and expenses of the food service operation in the following areas:

- a. Consumables, food and products
- b. Supplies - including cleaning supplies
- c. Labor - including all personnel who are directly involved with the food service operation
- d. Uniforms
- e. Table linen
- f. Long Distance Calls

- g. Printing and stationery supplies
- h. Bookkeeping and payroll preparation
- i. General Supervision
- j. Liability insurance as defined in 9.1
- k. Licenses and permits as defined in 9.9

8.2 The above items are expanded in this section to include:

- a. Daily cleaning and housekeeping of the food service, preparation, and service areas in Contractor's care and control, and washing all dishes, glassware, and utensils in accordance with accepted industry and health standards.
- b. **When providing catering services only;** prompt cleaning of all service area furnishings, including dining area and patio tables and chairs, so that they are clean, neat, and orderly at all times. All spills on floors and tables shall be cleaned.
- c. Cleaning of all preparation and food service equipment.
- d. Equipment repair and replacement (College owned), except freezer and refrigerator compressors.
- e. Remove grease from the kitchen (Hot Room) on a weekly basis and discard it in the disposal container located near the 1300 building.

8.3 The following shall be the responsibility of the College:

- a. Provision of fully equipped office for the Food Service Manager, to include typewriter, filing cabinet, and calculator
- b. Painting and redecorating
- c. Fire insurance
- d. Outside maintenance
- e. Pest control
- f. Window cleaning (outside only)
- g. Removal of garbage and trash from the area designated from the College
- h. Pest control is to include extermination services as requested by the Contractor Food Service Manager
- i. Cleaning and maintenance of the kitchen hood-exhaust fan and fire prevention system
- j. Telephone Service (local)
- k. Changes to the facility or its contents as required complying with all applicable law, including (without limitation) the Americans with Disabilities Act.

8.4 **Security:** Contractor shall secure all areas within its control at all hours. All keys given to the Contractor by the College will be logged out. Any expense incurred by the College as a result of a failure to secure, or due to loss of any key(s), will be charged to Contractor. Contractor is obligated to notify the College of any and all breaches of security, including the immediate notification of the loss of any keys. Contractor will work with the College and the College's security personnel to insure the safe operation of the unit. All utilities except telephone will be provided by the College. The College does not guarantee uninterrupted utility service and shall not be liable to Contractor for any loss, damage, cost or expense, which may result from the interruption or failure of any utility services. The College shall notify Contractor in advance of any scheduled breaks in utility service required by the College for maintenance purposes.

ARTICLE IX - OTHER TERMS AND CONDITIONS

9.1 **Insurance:** Contractor shall obtain and keep in force during the term of this Agreement, for the protection of the College and Contractor, Comprehensive General Bodily Injury and Property Damage Liability insurance in the Combined Single Limit of not less than Two Million Dollars (\$2,000,000.00), including but not limited to Personal Injury Liability, Broad Form Property Damage Liability, Blanket Contractual Liability, Products Liability covering only the operations and activities of Contractor under this Agreement, and shall deliver a certificate evidencing such coverages to the College within thirty (30) days after the execution of this Agreement. The insurance policy or policies shall contain a covenant by the issuing company that they shall not be canceled unless thirty (30) days prior

written notice of cancellation is provided to the College.

- a. **Workmen's Compensation Insurance:** Since the Manager and food service personnel are Contractor employees, a certificate must be provided to the College certifying that Contractor carries Workmen's Compensation Insurance in the amounts required by state and local statute. Statutory limits are \$1,000,000 each accident, \$1,000,000 policy limit (disease), and \$1,000,000 each employee (disease).
- b. **Fire Insurance:** College will carry adequate fire and extended coverage insurance and, as covered in clauses following, will waive any and all rights of recovery from Contractor for loss covered by perils defined in fire, extended coverage, and sprinkler leakage policies.

9.2 **Waiver of Subrogation:** Neither party has any obligation or responsibility for loss or damage to the other's real or personal property which is caused by fire, extended coverage periods, vandalism or malicious mischief. The parties waive all rights of recovery against each other for loss or damage to the waiving party occasioned by any such peril insured against under any policies insuring the waiving party's real and/or personal property.

9.3 **Indemnity:** Except as otherwise expressly provided, Contractor and College shall defend, indemnify and hold each other harmless from and against all claims, liability, loss and expense, including responsible costs, collection expenses and attorney's fees incurred, which arise by reason of the acts or omissions of the indemnifying party, its agents or employees in the performance of its obligations under this Agreement. Contractor specifically agrees to hold the College harmless in the event of food-borne illness or fatality.

9.4 **Assignment:** Contractor shall not assign this agreement or any part thereof without College's written consent. Further, Contractor may not use any other independent contractor for the purposes of discharging Contractor's obligation under this Agreement without College's written consent.

9.5 **Notices:** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be either served personally or otherwise delivered to the other party as follows:

Notices to: John Lau.
 Vice President for Business Services
 Imperial Valley College
 380 East Aten Road (P.O. Box 158)
 Imperial, CA 92251

9.6 **Catastrophe:** With the exception of payment obligations for prior performance under this Agreement, neither Contractor nor College shall be liable for the failure to perform their respective obligations when such failure is caused by fire, explosion, water, act of God, or inevitable accident, civil disorder or disturbance, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules or regulations, or like causes beyond the reasonable control of such party.

9.7 **Rights Beyond Termination:** The rights of termination for cause referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.

9.8 **Licenses and Permits:** Contractor, at its own expense and in its own name, will obtain any necessary permits and licenses in connection with the food service at the operation.

ALLOCATION OF REVENUE

10.1 Contractor will pay College, by the 1st of each month, a monthly rent of \$1,500.00 per month, except for the pro-rated months listed as follows:

June:	\$1,000.00 monthly rent
August and December:	\$525.00 monthly rent

10.2 Contract will pay Associated Student Government (ASG), by the 1st of each month, a commission of \$250.00 per month.

10.3 Contractor also agrees to the following financial commitments:

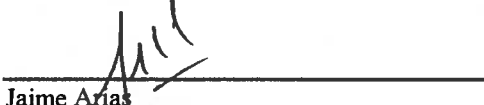
- A. \$2,500.00 in trade value annually for student activities (i.e., Back-to-School BBQ).
- B. Contractor will provide \$3,000.00 in scholarship money to the College on an annual basis providing that contractor achieves certain profit objectives. The payout of scholarship money will be paid out in \$1,000.00 increments. The first \$1,000.00 will be paid out when a profit of \$15,000.00 is achieved. The second \$1,000.00 will be paid out when profit reaches \$20,000.00. The third \$1,000.00 will be paid out when profit reaches \$25,000.00.
- C. Contract will provide up to \$500.00 in trade value per year of food, beverages and services for College events at the discretion of the President/Superintendent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers this 16th day of October 2008.

IMPERIAL VALLEY COLLEGE

CONTRACTOR

By 
John Lau
Vice President for Business Services

By 
Jaime Arias
Chips and Salsa