

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

SODEXO OPERATIONS, LLC)	Case No.
Plaintiff,)	
v.)	COMPLAINT
VIRGINIA AQUARIUM & MARINE SCIENCE CENTER FOUNDATION, INC.,)	JURY TRIAL DEMANDED
Defendant.)	

Plaintiff Sodexo Operations, LLC (“Sodexo”), pursuant to Fed. R. Civ. P. 3 and 8(a), for its Complaint against Defendant Virginia Aquarium & Marine Science Center Foundation (the “Foundation”), states and alleges as follows:

INTRODUCTION

This action arises out of a Food Service Agreement, dated July 1, 2017 and subsequently amended (the “Agreement,” attached hereto as Exhibit A), between Sodexo and the Foundation, whereby Sodexo managed and operated the Foundation’s food service operation on campus at the Virginia Aquarium. When the COVID-19 pandemic struck, the City of Virginia Beach announced on March 15, 2020, that it was closing all recreation centers, libraries, and the Virginia Aquarium. Shortly thereafter, Virginia Governor Ralph Northam issued a series of executive orders, closing non-essential businesses and advising Virginians to stay home as much as possible. As a result, the Virginia Aquarium has been closed to the public since March 16, 2020, rendering it impossible for Sodexo to provide any services to the Foundation, through no fault of its own. Fortunately, the Parties were prescient enough to specifically include a Force Majeure clause in the Agreement, which contemplated a situation where an “act of God”—like a

pandemic—or “governmental policy,” like the City of Virginia Beach’s directive and Governor Northam’s orders, prevented performance. The Parties even went a step further, and chose to include a Suspension of Services clause, permitting either party to terminate the Agreement if such a “force majeure” arose and caused services to suspend for more than 30 days. After a 46 day suspension of services, on May 1, 2020, Sodexo notified the Foundation that it was exercising its right to terminate the Agreement, triggering the Foundation’s contractual obligation to reimburse Sodexo for the unamortized portion of capital investments Sodexo had made to the Foundation (May 1, 2020 Termination Letter attached hereto as Exhibit B). Despite Sodexo’s full performance under the Agreement, the Foundation refuses to pay amounts owed to Sodexo, in direct breach of its terms. The Foundation’s bad faith refusal to pay and willful violation of the Agreement have caused hundreds of thousands of dollars in damages to Sodexo.

PARTIES

1. Sodexo is a Delaware limited liability company with its principal place of business at 9801 Washingtonian Boulevard, Gaithersburg, Maryland 20878. The sole member of Sodexo Operations, LLC is Sodexo, Inc., a Delaware corporation with its principal place of business at 9801 Washingtonian Boulevard, Gaithersburg, Maryland 20878.
2. Upon information and belief, the Foundation is a Virginia non-profit corporation, with its principal place of business at 717 General Booth Boulevard, Virginia Beach, Virginia 23451.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 USC § 1332, because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

4. This Court has personal jurisdiction over the Foundation because the Foundation is a citizen of Virginia.
5. Venue is proper in this District, pursuant to 28 U.S.C. § 1391, because the Foundation is subject to personal jurisdiction in this State. In addition, courts in Virginia have a substantial interest in providing a forum for the enforcement of contracts entered into in Virginia.
6. Venue is proper in the Norfolk Division, as the conduct giving rise to this dispute occurred in Virginia Beach, Virginia.

FACTS

The Agreement

7. On July 1, 2017, Sodexo and the Foundation entered into the Agreement for the provision of food services by Sodexo to the Foundation, on campus at the Virginia Aquarium.
8. The term of the original Agreement was ten (10) years commencing on July 1, 2017 and continuing through June 30, 2027. On May 21, 2019, the Parties executed an Amendment to the Agreement.
9. Section IV of the Agreement, Capital Investments, provides that Sodexo will make a Capital Investment of no more than five hundred seventy-five thousand dollars (\$575,000) to the Foundation, to be paid in Years 1, 3, and 6 of the Agreement.
10. Section IV(e) provides:

Amortization of Capital Investments shall be by straight-line method over the term of this Agreement. In the event of early termination of this Agreement, except for termination for convenience by Sodexo, the Foundation shall reimburse Sodexo for the unamortized portion of the Capital Investments remaining at the time of such termination.
11. Section XXVI, Force Majeure, provides:

Neither party shall be obligated to perform any non-monetary act required hereunder and neither party shall be deemed to be in default if its performance is prevented by fire, earthquake, flood, *act of God*, riot, civil

commotion, or other occurrence of condition of a like nature, or by any law or act of any public or military authority resulting in the existence of economic controls, riot, hostilities, war, terrorism, or *governmental policy*.

(emphasis added).

12. Section XXXI, Suspension of Services, refers specifically to suspensions caused by force majeure. Section XXXI(a) provides:

In addition to any suspension of services causes as provided in Section XXV or XXVI, Services may be suspended for a limited period of time as set forth below, without liability of either party to the other, when either party determines that it is impractical to carry on such Services by reason of a labor dispute involving Sodexo, or for other reasons that the parties agree are beyond the control of either party. If any suspension of Services because of a labor dispute continues for more than forty-eight (48) hours, the Foundation shall have the right, without incurring any liability to Sodexo (except as otherwise provided under this Agreement), to take whatever action it may in its sole discretion deem necessary or appropriate in order to resume serving food and beverages, and the Foundation may take such action as it deems necessary or appropriate to operate the Foodservice Areas used by Sodexo and to make them available to patrons and staff of the Aquarium.

(emphasis added).

13. Section XXXI(b) provides that, in the event that any suspension contemplated by Section XXXI(a) continues for longer than thirty (30) days, “either party may then, upon written notice to the other, terminate this Agreement. Upon such termination, the provisions of subsections (c) through (i) of Section XVII (Termination and Remedies) shall apply.”

14. Section XXVII(d), Repayment of Capital Investment, provides:

Except in the event of termination by Sodexo for convenience, the Foundation shall be responsible for the repayment to Sodexo of that portion of the Capital Investment made by Sodexo pursuant to Section IV as remains unamortized as of the date of termination. Any funds remaining in the Advertisement and Promotion Funds shall be retained by the Foundation.

The Virginia Aquarium is Closed by Governmental Policy

15. On March 16, 2020, the City of Virginia Beach closed all recreation centers, libraries, and the Virginia Aquarium, to reduce the spread of COVID-19.

16. On March 24, 2020, Governor Ralph Northam issued Executive Order 53, *Temporary Restrictions on Restaurants, Recreational Entertainment, Gathering, Non-essential Retails Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19)*. The order mandated the closure of all non-essential businesses, including aquariums, as of 11:59pm on March 24, 2020, until April 23, 2020.
17. On March 30, 2020, Governor Northam issued Executive Order 55, *Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19)*. The order directed all Virginians to stay home except in extremely limited circumstances.
18. Per the City of Virginia Beach's directive and the Governor's subsequent executive orders, the Foundation closed the Virginia Aquarium, and Sodexo stopped providing services, on March 16, 2020.

Sodexo Properly Terminates the Agreement

19. As of May 1, 2020, Sodexo's services at the Aquarium had been suspended for 46 days.
20. On May 1, 2020, Sodexo, via letter and in accordance with the Agreement's notice requirements, notified the Foundation that, pursuant to Sections XXXI and XXVI of the Agreement, together concerning suspension of services due to force majeure, Sodexo was exercising its contractual right to terminate the Agreement. In the same letter, Sodexo offered to assist the Foundation with finding and transitioning to a new service provider.

The Foundation Refuses to Pay Amounts Owed

21. Per Sections IV(e) and XXVII(d) of the Agreement, all unamortized amounts of Sodexo's capital investment "shall be" reimbursed by the Foundation to Sodexo upon termination of the Agreement.

22. Over the course of the Agreement, Sodexo made capital investments to the Foundation, which were used, per the Agreement, to procure certain equipment and make improvements to the Foundation's food service operations.
23. At the time of termination, the total amount of Sodexo's investment that remained unamortized was \$363,645.42.
24. Since that date, Sodexo has removed all removable assets from the Foundation. The remaining unamortized amount due to Sodexo is \$292,250.15.
25. Despite numerous written and oral communications, the Foundation has refused to reimburse Sodexo for the unamortized investment, in material breach of the Agreement.

FIRST CAUSE OF ACTION
(Breach of Contract)

26. Sodexo incorporates by reference the allegations in the previous paragraphs.
27. The Agreement is a binding contract supported by consideration.
28. Sodexo has performed under the Agreement.
29. Per Sections IV(e) and XXVII(d) of the Agreement, the Foundation agreed to reimburse Sodexo for any unamortized portion of the Capital Investment remaining at the time of termination.
30. Sodexo properly terminated the Agreement on May 1, 2020.
31. The Foundation has refused to reimburse Sodexo for the unamortized portion of the Capital Investment, in material breach of the Agreement.
32. As a direct and proximate result of the Foundation's material breaches, Sodexo has suffered and will continue to suffer harm and monetary damages.

SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

33. Sodexo incorporates by reference the allegations in the previous paragraphs.

34. The Agreement is a binding contract supported by consideration.
35. Sodexo has performed under the Agreement, and justifiably expected that the Foundation would comply with its terms, including Sections IV(e) and XXVII(d).
36. The Foundation's bad faith conduct in refusing to pay amounts owed under the Agreement has deprived Sodexo of the benefits of the Agreement, in violation of the implied covenant of good faith and fair dealing.
37. As a direct and proximate result of the Foundation's material breaches, Sodexo has suffered and will continue to suffer harm and monetary damages.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

38. Sodexo incorporates by reference the allegations in the previous paragraphs.
39. Sodexo conferred a benefit upon the Foundation by making a capital investment to the Foundation, with the expectation that the Foundation would repay that investment.
40. The Foundation knew that Sodexo conferred this benefit upon the Foundation, and accepted the capital investment, knowing that Sodexo expected repayment of the investment.
41. The Foundation has received and retained the benefit of all services rendered by Sodexo, as well as the investment made by Sodexo.
42. The Foundation's failure to reimburse Sodexo for the unamortized portion of its investment has resulted in an inequity to Sodexo, and the unjust enrichment of the Foundation.

PRAYER FOR RELIEF

WHEREFORE, Sodexo respectfully requests that this Court:

- A. Enter Judgment in favor of Sodexo on all claims set forth above.

B. Award Sodexo damages including, but not limited to, expectation damages and consequential damages in an amount to be determined against the Foundation, with pre- and post-judgment interest.

C. Award Sodexo its reasonable attorneys' fees and costs.

D. Award Sodexo such further damages and equitable relief as are just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Sodexo requests trial by jury in this action of all issues so triable.

Dated this 19th day of June, 2020.

SODEXO OPERATIONS, LLC,
Plaintiff

By *s/ Wendy C. McGraw*

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EXHIBIT A

FOOD SERVICE AGREEMENT BY AND BETWEEN
VIRGINIA AQUARIUM & MARINE SCIENCE CENTER FOUNDATION AND
SODEXO OPERATIONS, LLC

This Food Service Agreement ("Agreement") is entered into as of the 1st day of July, 2017 by and between the Virginia Aquarium & Marine Science Center Foundation, Inc., a Virginia non-stock, non-profit corporation, having its principal place of business at 717 General Booth Boulevard, Virginia Beach, Virginia 23451 (hereinafter the "Foundation"), and Sodexo Operations, LLC, a Delaware limited liability company with a principal place of business at 9801 Washingtonian Boulevard, Gaithersburg, Maryland 20878 (hereinafter "Sodexo").

I. RECITALS

1. Under an agreement with the City of Virginia Beach (the "City"), which owns the land and buildings located at 717 General Booth Boulevard and 801 General Booth Boulevard, in the City of Virginia Beach, Virginia, in which the Virginia Aquarium & Marine Science Center (the "Aquarium") is housed, the Foundation has the exclusive responsibility for the provision and operation of all food services, including but not limited to restaurants, cafes, snack bars, food concessions stands, vending machines, and catering services of any type provide on the premises or property of the Aquarium.

2. Sodexo operates restaurants, café, food and beverage catering, food and beverage vending machines and related food services at other aquariums, museums and retail locations in the United States similar to those provided at the Aquarium.

3. In response to the "Request for Proposal, Food Services and Catering Operations," dated November 1, 2016, issued by the Foundation (the "RFP"), Sodexo submitted a presentation entitled "A Customized Design for Virginia Aquarium & Marine Science Center Foundation, Inc.," submitted under cover of letter of January 17, 2017 (the "Sodexo Response") setting forth its proposal for providing the food and other specified services sought in the RFP which both are hereby incorporated herein by reference. After review and evaluation of the responses to the RFP, and in reliance on the representations made by Sodexo in the Sodexo Response, the Foundation has entered into nonbinding discussions with Sodexo with a view toward entering into an agreement for the provision of the food and other specified services contemplated by the RFP.

4. The Foundation and Sodexo now desire to enter into an agreement under which Sodexo will, subject to the terms and conditions set forth below, provide food and other specified services to the Foundation as set forth in the Sodexo Response and pursuant to the provisions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties agree as follows:



Subject to the conditions and provisions of this Agreement, the Foundation grants to Sodexo the exclusive right to provide, and Sodexo agrees to provide: (i) retail food and beverage services to patrons, guests, volunteers and employees on the premises of the Aquarium; and (ii) food and beverage catering service for events sponsored or authorized by the Foundation and held on the premises of the Aquarium. Notwithstanding the provisions of this Paragraph, on no more than four (4) occasions during each twelve (12) month period beginning with the effective date of this Agreement, the Foundation may, in its discretion obtain food and beverage services from a provider other than Sodexo. Except as expressly authorized by the Foundation, Sodexo shall not sell or distribute any merchandise or other items or provide any services through electronic means or at off-site locations, including websites or similar facilities, that are identified or connected with or related to the Aquarium or its exhibits or facilities.

II. Definitions

The following words and phrases, when used in this Agreement, shall have the respective meanings given to them in this Section:

“Alcoholic Beverage Services” shall mean the sale and serving of alcoholic beverages on the premises of the Aquarium or at any event held at the Aquarium where such event and such service are permitted by the Foundation.

“Advertisement and Promotion Fund” shall mean the fund resulting from the payment by Sodexo, pursuant to Section X.(b) hereof, of a sum equal to one percent (1%) of Sodexo’s collective Gross Receipts from café, concessions and External Catering and for the preceding month, which fund is to be used by the agreement of Sodexo and the Foundation for the sole purpose of advertising and promoting the restaurants, food services, catering, and special events operated, provided, or served by Sodexo at the Aquarium. Such fund shall be held and maintained by the Foundation.

“Aquarium Attendee” shall mean the paid and non-paid attendees and visitors to the Aquarium, Adventure Park, and Boat during the regular operating hours, or attendees of Aquarium programs, such as scout overnights and other events, for which there is a charge.

“Business Day” is defined as any calendar day.

“Catering” shall mean all food and beverage sales and food services provided on the property or premises of the Aquarium, under a written contract between Sodexo and a catering customer. Catering shall also include food and beverage services that Sodexo in its discretion and at the request of the Foundation agrees to provide and that it provides at other locations.

“Charge” shall mean a fee established by Sodexo for goods or services provided by Sodexo.

“Contract Year” shall mean the twelve (12) month period beginning July 1 and ending at midnight on June 30 of the following year.



"Director" shall mean the Director of the Department of Aquarium and Museums of the City of Virginia Beach, or such person to whom the Director may from time to time delegate the duties of the Director under this Agreement.

"Effective Date" shall mean July 1, 2017, the date on which this Agreement takes effect.

"External Catering" shall mean catering in any Foodservice Area, when catering services are provided for an external organization or group not affiliated with the Foundation or the Aquarium.

"FF&E" shall mean all furniture, fixtures, and equipment, owned and provided by the Foundation, including FF&E purchased by Sodexo in conjunction with the Services provided by Sodexo under this Agreement.

"Foodservice Areas" shall include all areas on the property of the Aquarium used by Sodexo for the storage, preparation, service or consumption of food and beverages, including vending machines, carts, trash and garbage disposal areas and food truck.

"Foundation-Sponsored Catering" shall mean all food and beverage catering services provided at the Aquarium initiated and paid for by the Foundation or by groups and organizations affiliated with the Foundation, including conference dining.

"Gross Receipts" shall mean (i) with respect to the calculation of café and concessions commission, all receipts received by Sodexo in the operation of café and concessions less discounted sales as detailed in Section XIX and applicable taxes; and (ii) with respect to the calculation of External Catering commission, all receipts actually received by Sodexo for External Catering sales, with the exception of sales or other trustee taxes collected by Sodexo. As an illustration, if Sodexo caters a party and charges \$10,000, the entire amount (exclusive of any sales or other trustee taxes it collects) would be included as Gross Receipts and therefore subject to Commission, irrespective of the characterization of such charges by Sodexo.

"Loose Equipment" includes, but is not limited to, service ware, smallware, flatware, tables, chairs point of sale equipment, kitchenware (pots, pans, and utensils), cash registers, computers and computer related hardware and software used by Sodexo in conjunction with the Services Sodexo provides hereunder.

"Services" means the services provided by Sodexo under this Agreement.

"Subcontracted Services" means food and/or beverage vending machines and other services provided at the Aquarium by third parties under contract with Sodexo. All payments received by Sodexo with respect to Subcontracted Services shall be considered part of Gross Receipts and all Subcontracted Services shall be subject to the Director's prior written approval.

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III. TERM OF AGREEMENT

This Agreement shall commence on July 1, 2017 (the "Effective Date") and, unless sooner terminated as herein provided, shall end at midnight on June 30, 2027 ("Term"). With the exception of the purchase of Existing Equipment as provided under Section IV (a) below which shall be effective within fifteen (15) days of the execution of this Agreement, all provisions of this Agreement shall be retroactive to the Effective Date.

IV. CAPITAL INVESTMENT

(a) Sodexo agrees to make capital investments not to exceed FIVE HUNDRED SEVENTY-SEVEN THOUSAND DOLLARS (\$577,000) ("Capital Investment"), as follows:

YEAR 1

Revitalization of the Osprey Café and Theater Concession	\$350,000
Food Truck	\$17,000
POS and Digital Screens	\$35,000
Purchase of Existing Equipment currently owned by the Foundation within fifteen (15) days of the execution of this Agreement, as shown in Exhibit D ("Existing Equipment")	\$25,000
TOTAL YEAR 1	\$427,000

YEAR 3

New Café at Marsh Pavilion (Tidewater Café)	\$100,000
TOTAL YEAR 3	\$100,000

YEAR 6

Revitalization	\$50,000
TOTAL YEAR 6	\$50,000
TOTAL CAPITAL INVESTMENT	\$577,000

(b) All Capital Investment shall be consistent with the descriptions and illustrations contained in the Sodexo Response and shall be subject to the prior approval of the Director. Renovation/revitalization of the Osprey Café/Watershed Market shall be in accordance with a mutually agreed upon timeline and shall be subject to review and approval by the Foundation. Sodexo shall provide documentation to the Foundation of all Capital Investment upon request.

(c) Sodexo shall own the portion of the Capital Investments comprised of the Food Truck, POS, and Digital Screens and Existing Equipment pursuant to subsection (a) until complete amortization or reimbursement therefor at which time the ownership thereof shall transfer from Sodexo to the Foundation.

(d) Sodexo shall not own the portion of the Capital Investments used for revitalization of the Foodservice Areas or other objects which are affixed to the Aquarium.

(e) Amortization of Capital Investments shall be by straight-line method over the term of this Agreement. In the event of early termination of this Agreement, except for termination for convenience by Sodexo, the Foundation shall reimburse Sodexo for the unamortized portion of the Capital Investments remaining at the time of such termination.

(f) In the event Sodexo's actual capital expenditure for Capital Investments indicated as the "Total Investment" by year is less than ninety per cent (90%) of the amount shown on the Total Investment line, Sodexo shall pay to the Foundation, within fifteen (15) days of the completion of work and acceptance by the Foundation, a sum equal to the difference between Sodexo's actual capital expenditure for such year and the amount shown herein for such year.

V. TAXES

Sodexo shall collect and timely remit to the appropriate governmental authority all sales and other taxes, including any taxes levied upon its equipment, arising from its provision of the Services under this Agreement. Sodexo shall, no less frequently than once per year or upon written request of the Foundation, provide written certification of such remittance within fifteen (15) working days after receipt of such request.

VI. REPRESENTATIONS AND WARRANTIES

(a) *Foundation Warranties.* The Foundation represents and warrants that as of the date of this Agreement that:

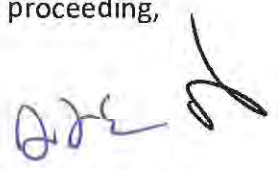
- (1) It has full legal authority to enter into this Agreement with Sodexo and that the representative who executes this Agreement on behalf of the Foundation has been authorized to do so;
- (2) The execution of this Agreement will not cause the Foundation to be in material breach of any other agreement to which the Foundation is or becomes a party; and
- (3) It has received no notice of any type of any claim or litigation which would jeopardize or impair its ability to execute this Agreement or to fulfill its obligations hereunder.

(b) *Sodexo Warranties.* Sodexo represents and warrants that as of the date of this Agreement, and unless otherwise set forth below, continuing throughout the Term:

- (1) It has been duly authorized to and may validly enter into this Agreement with the Foundation;
- (2) Each individual executing this Agreement on behalf of Sodexo is duly authorized to do so;

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- (3) The execution and delivery of this Agreement by Sodexo shall not cause it to breach or be in default under any material agreement to which it is or becomes a party or by which it is bound;
- (4) It has the financial resources to undertake the Services and to fund the investments and other financial obligations required by this Agreement and that the necessary financing has been approved by its board of directors or chief financial officer or other officer having the authority to approve such obligations;
- (5) No consents to or approvals of this Agreement are necessary under any agreement to which it is a party or by which it may be bound;
- (6) Neither Sodexo, nor any of its employees, agents, contractors or subcontractors, will knowingly commit any act or omission that adversely affect any insurance coverage of the Foundation, including any such coverage provided to the Foundation by the City;
- (7) All financial records prepared by or on behalf of Sodexo pursuant to this Agreement will be prepared in accordance with International Financial Reporting Standards not inconsistent with Generally Accepted Accounting Principles (GAAP) within the United States;
- (8) The products sold at the Aquarium pursuant to this Agreement are registered, if required, and will not be distributed, sold or priced in violation of any applicable federal, state, or local law, and that it shall endeavor to monitor and supervise the performance of its third party suppliers of food and will take such action as may be reasonably necessary and proper to ensure that such suppliers comply with all applicable laws, ordinances, rules, regulations and orders;
- (9) To best of its knowledge, it is and shall remain in compliance with all federal and state laws, ordinances and regulations applicable to the Services and which are material to the operation of its business and conduct of its affairs, including those pertaining to safety of the products and equipment supplied by it at the Aquarium, occupational health and safety, environmental protection, nondiscrimination, antitrust, and equal employment opportunity;
- (10) It is not a party to any pending or threatened litigation, action, suit, proceeding, complaint, charge, hearing investigation or arbitration that may interfere with its ability to fully perform its obligations under this Agreement. Sodexo will immediately notify the Foundation if at any time during the Term it becomes a party to any litigation, action suit, proceeding,



complaint charge, hearing investigation or arbitration that may interfere with its ability to fully perform its obligations under this Agreement;

- (11) All Sodexo employees who perform work under this Agreement are and will all times be free of communicable diseases and have the proper skill, training and background to be able to perform the duties assigned to them in a competent and professional manner; and
- (12) The sale, lease and use by products and equipment supplied by it, including but not limited to, computer hardware and software, will not infringe or misappropriate any trade secret, trademark, patent, copyright, or other proprietary right.

VII. CATERING

(a) *Generally.* Unless otherwise provided in this Agreement and with the specific exceptions of: (1) Kosher items; (2) events on boat tours originating at or arranged by the Foundation or Aquarium staff; (3) staff and volunteer meetings held in the normal course of business; (4) Public Service Recognition Lunches; and (5) Sensible Seafood Fests and similar multiple-vendor events, Sodexo shall have the exclusive right hereunder to provide all food and beverages, including alcoholic beverages, sold at retail on the premises of the Aquarium, and to provide all Catering services at events held at the Aquarium. If Sodexo cannot accommodate special menu requirements, it will make reasonable efforts to enter into an Agreement with a third party to provide such special requirements. Any such third party subcontractor shall be required to procure insurance coverage of at least One Million Dollars (\$1,000,000.00) per occurrence against any liability resulting from the performance of the subcontractor and shall promptly provide the Foundation with a certificate of insurance naming as additional insureds Sodexo, the Foundation and the City of Virginia Beach.

(b) *Exclusivity.* The Foundation shall designate Sodexo as the exclusive in-house caterer at the Aquarium.

(c) *Aquarium Rentals.* The Foundation, in collaboration with the Director, shall manage the booking and rental of Aquarium facility spaces for all events catered by Sodexo on the premises of the Aquarium based upon the guidelines established by the Foundation. The Foundation shall be responsible for billing and collecting facility rental fees for events catered by Sodexo based at rates established by the Foundation. Facility rental contracts will be between the Foundation and customer.

(d) *Catering Contracts.* All Sodexo Catering contracts shall be in writing, shall include all menus, prices, costs to be invoiced to customer, terms and conditions, and shall be administered, managed and processed by Sodexo's resident manager. Sodexo shall provide the Foundation a copy of all such catering contracts at least three (3) days prior to the event.

(e) *Booking Guidelines.* The Foundation shall develop booking guidelines for Catering events in consultation with Sodexo. The Foundation may change such guidelines from time to time

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and, in its discretion, may approve, in advance, any material deviations from the existing guidelines approved by both parties. The Foundation shall provide a current version of such guidelines to Sodexo as of the commencement of the Contract Services Term.

(f) *Leads, Inquiries And Referrals.* Leads or inquiries from persons or firms interested in hosting or sponsoring Catering events at the Aquarium shall, if otherwise acceptable to the Foundation, be provided to Sodexo for servicing. Sodexo will contact catering customers referred to it by the Foundation within forty-eight (48) business hours. Sodexo shall document in writing all leads, referrals and inquiries including the source of the referral or call, if applicable, and provide Foundation a copy of its daily call log if requested. If Sodexo fails to contact all leads, referrals and prospective Catering contracts within forty-eight (48) business hours of having been given the necessary contact information by the Foundation, Sodexo will be in material default under this Agreement. As used herein, "contact" is defined at a minimum as leaving a voice mail or sending an email based on the person's preferred method of contact.

(g) *Availability.* Sodexo shall be available within forty-eight (48) business hours to meet with all leads, prospects or other persons making inquiries about catering services, and to arrange if appropriate for a tour of Aquarium food service facilities. Sodexo agrees to provide all leads and prospects upon request with a full and complete written proposal, including pricing, standard menus, and any other information requested by the prospective Catering customer, within forty-eight (48) business hours of the prospective customer's request; provided, however, that Sodexo shall be given a reasonable amount of additional time in which to provide custom menus. If Foundation makes a reasonable determination that Sodexo has consistently failed to provide proposals and responses to prospective catering customers in a timely manner, Sodexo will be in material default under this Agreement.

(h) *Advance Deposits; Cancellations.* If Sodexo receives advance deposits from any catering customer covering an event which is canceled, a portion of the deposit shall be refunded promptly to the customer in accordance with policies mutually agreed upon by the Foundation and Sodexo.

VIII. Donated Food and Beverages; Showcase Event; Feedback.

(a) *Donated Food.* The Foundation reserves the right to receive and use at Foundation and Aquarium sponsored events food, beverages and alcoholic beverages that have been donated or purchased at wholesale cost ("Donated Products"). The Foundation agrees to coordinate as necessary with Sodexo concerning the receipt, preparation and service of any Donated Products, and agrees to pay Sodexo an amount which has been mutually agreed by the parties for such preparation and service prior to same. The Foundation acknowledges that Sodexo has entered into agreements with many vendors and suppliers of products that (i) give Sodexo the right to inspect such vendors' and suppliers' plants and/or storage facilities and (ii) require such vendors and supplier to adhere to standards to ensure quality of the products purchased by Sodexo for or on behalf of the Foundation. The Foundation agrees to provide Sodexo reasonable advance notice of its intent to use Donated Products. Sodexo may, in its discretion, decline to use or serve such

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Donated Products. Should Sodexo do so, the Foundation may, in its discretion and subject to the limitations in paragraph 1 of this Section, procure the services of another food service provider for the event or function at which the Donated Products are to be used.

(b) *Showcase Event.* With the approval of the Foundation, Sodexo agrees to hold a "Showcase Event" at the Aquarium or a mutually agreed upon location, within the first one hundred twenty (120 days) after the Effective Date, and to do so annually thereafter throughout the Term of the Agreement. For purposes of this Agreement, a "Showcase Event" shall mean a major marketing event hosted by Sodexo and the Aquarium held for prospective facility rental and special event clients. The mutually agreed upon amount for the Showcase Event shall be paid from the Advertisement and Promotion Fund.

(c) *Feedback.* Sodexo shall use the Foundation's catering feedback system or other mutually agreed upon feedback system and establish a protocol for responding to negative feedback. Within thirty (30) days of receipt of negative feedback, Sodexo shall respond to the customer providing negative feedback and provide to the Foundation a report of such feedback and the action Sodexo has taken or will take to rectify the problem.

IX. Commissions; Financial Assumptions

(a) *Commissions.* Sodexo shall pay the Foundation the "Commissions" on an incremental basis as hereinafter provided, based on the percentage of Sodexo's Gross Receipts specified below:

<u>Service Type</u>	<u>Commission (% of Gross Receipts)</u>
<i>Cafeteria/Concession:</i>	
All Gross Receipts	17%
<i>External Catering:</i>	
\$0 - \$450,000	16%
\$450,001 - \$750,000	19%
Over \$750,000	23%

(b) *Guaranteed Commission.* Sodexo guarantees that the Commission payable to Foundation based upon Sodexo's combined Gross Receipts from cafeteria/concession sales and External Catering sales shall be no less than One Hundred Seventy-Five Thousand Dollars (\$175,000.00) for the first Contract Year ("Guaranteed Commission"), with an increase in the Guaranteed Commission of three percent (3%) in each subsequent Contract Year, provided that the Aquarium has a minimum attendance during each Contract Year of at least Six Hundred Fifty Thousand (650,000) Aquarium Attendees, including attendance at the Adventure Park and boat ("Minimum Attendance"). If the Commissions set forth in this Section are less than the Guaranteed Commission ("Shortage"), Sodexo shall pay the Foundation the Shortage.

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(c) *Adjustments.* In the event the actual annual Aquarium Attendees are less than the Minimum Attendance, the Guaranteed Cafeteria/Concession Commission shall be reduced by Twenty Cents (\$0.20) per person less than the Minimum Attendance. Reconciliation and payment of amounts owed with respect to the Guaranteed Commission shall be made within thirty (30) days after the end of each Contract Year.

(d) *Review.* The parties agree to review the financial terms of this Agreement on or about the beginning of Contract Year Six of this Agreement and to discuss investment opportunities and possible commission adjustments. Any modification to the financial terms shall not take effect until it has been mutually agreed upon and memorialized in a written amendment to the Agreement executed with the same formalities as this Agreement.

(e) *Financial Assumptions.* The financial terms of the Agreement are based upon the following assumptions. In the event of a material change in assumptions, the financial terms shall be subject to adjustment as agreed upon by the parties:

- (1) Annual Aquarium attendance of not less than 650,000 Aquarium Attendees, including attendance at the Adventure Park and boat rides;
- (2) Aquarium open seven (7) days per week, twelve (12) months per year, except on Thanksgiving Day and Christmas Day and closures necessitated by weather, accident or force majeure, or suspension of Services pursuant to the provisions of Section XXXI;
- (3) Operating hours from 9 a.m. to 5 p.m.
- (4) Exclusive Catering rights by Sodexo, with limited annual exceptions.

X. Reporting, Accounting and Payment Obligations

(a) *Statement of Gross Receipts.* Within thirty (30) business days following the end of each calendar month during the Term of this Agreement, Sodexo shall provide the Foundation with a final statement of Gross Receipts for the immediately preceding calendar month. Such statement shall detail all daily Gross Receipts by income category. Examples of income categories include, at a minimum, but are not necessarily limited to, foodservice facilities by name, carts by location, vending machines, and other visitor foodservice points of sale if applicable, External Catering food, External Catering Alcoholic Beverage Service, Foundation and Aquarium-sponsored catering food, Foundation and Aquarium sponsored catering Alcoholic Beverage Service. The statement of Gross Receipts shall include per capita revenue, average checks, customer counts, the budgeted Gross Receipts for the current month by income category, the current month's actual Gross Receipts by income category, year-to-date actual Gross Receipts by income category, and any other data or statistics reasonably requested by the Foundation.

(b) *Payments to the Foundation.* Within thirty (30) business days following the last day of each calendar month during the Term of this Agreement, Sodexo shall pay to the Foundation all amounts due for the preceding calendar month, including commissions, and required contributions



to the Advertisement and Promotion Fund as provided in this Agreement. The Foundation shall maintain the Advertisement and Promotion Fund in a restricted account. Amounts remaining in the Advertisement and Promotion Fund at the end of the Term of the Agreement shall be retained by the Foundation.

(c) *Billing.* The Foundation shall bill Sodexo monthly for amounts Sodexo is required to pay under this Agreement. All such bills shall be paid to the Foundation by Sodexo within thirty (30) days of the date they are mailed or delivered, whichever is earlier.

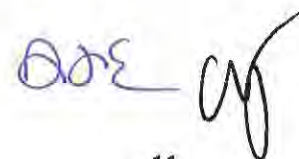
(d) *Delivery.* Checks and reports shall be mailed or delivered to the Foundation at the following address:

Virginia Aquarium & Marine Science Center Foundation
717 General Booth Boulevard, Suite 10
Virginia Beach, Virginia 23451.

(e) *Payments to Sodexo.* Within ten (10) calendar days of having catered a Foundation Sponsored Catering event, Sodexo shall submit an itemized invoice to the Foundation detailing all charges for which the Foundation is responsible. The Foundation shall pay all invoices for which it is responsible within thirty (30) days from the date the invoice is mailed or delivered, whichever is earlier.

(f) *Interest and Returned Check Penalties.* Sodexo and Foundation shall be obligated to pay interest on any amount not paid on or before the due date of one and one-half percent (1.5%) per month from due date until paid. Sodexo and Foundation shall also pay a returned check penalty of One Hundred Dollars (\$100.00), as well as interest on any check that is returned by the bank for insufficient funds or for other reasons. When either party discovers that a check has been returned unpaid by the bank, the other party shall be given immediate written notice. Full payment of the amount of the returned check, including all penalties imposed by the bank, the returned check penalty imposed by this Agreement, together with interest, shall be immediately due. Upon termination of the Agreement, all outstanding amounts arising under this paragraph shall immediately become due and payable.

(g) *Right of Offset.* Unless the party to whom an invoice is submitted gives the party submitting the invoice written notice within fifteen (15) days of the date the invoice is mailed or delivered that some or all of the charges covered by the invoice are in dispute, all invoices shall be due and payable as set forth in this Section. In the event some but not all of the items covered by an invoice are in dispute, the party shall pay that portion of the invoice which is not in dispute within such period. Any invoice, or any portion of any invoice, that is not in dispute and has not been paid within such period, plus any applicable penalties and interest, may be offset by the party entitled to receive payment against any amount the party entitled to receive payment may owe the party obligated to pay the invoice.



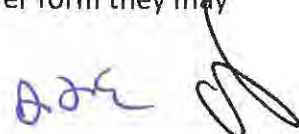
(h) *Pre-Opening and Start-Up Costs.* Sodexo shall be solely responsible for the payment of all costs incurred in preparing and opening the restaurant and other food service locations covered by this Agreement, including, without limitation, cleanup, stocking, obtaining essential consumable inventories, staffing, training, petty cash, and all other items necessary to the opening and beginning of operations.

(i) *Annual Financial Statements.* Within sixty (60) days following the end of each Contract Year and continuing throughout the Term of this Agreement, Sodexo shall provide the Foundation with an annual statement of Gross Receipts covering the Services under this Agreement during such period. The statement shall itemize all major income categories, and shall provide percentage ratios and a comparison of actual income to budgeted income, as required under this Agreement. Upon the request of the Foundation, Sodexo shall provide reasonable information concerning line-item income items.

(j) *Audit Report.* In the event Sodexo chooses of its own accord to have an audit of Gross Receipts performed by a third party, within thirty (30) days of the completion of the audit report, Sodexo shall provide the Foundation with a copy of such report.

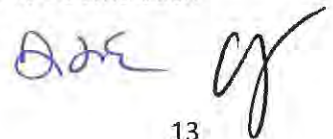
(k) *Books and Records; Audits.*

- (1) Sodexo shall maintain separate and accurate books and records of Gross Receipts in connection with the Service operations it provides under this Agreement and shall retain such records for a period of at least four (4) years following the end of each Calendar Year. Sodexo shall maintain complete and accurate financial records for all transactions related to its use of Aquarium's facilities and its provision of Services under this Agreement, including, but not limited to, those transactions related to Gross Receipts, such as cash register tapes, software, Catering billings and other sales receipts. These items shall be properly stored on the premises of the Aquarium and shall be retained by Sodexo for four (4) years following the end of the calendar year in which the records were generated, or the period required by IRS guidelines or until the completion of an audit by auditors engaged by the Foundation, whichever period is longer. In no event shall such records and receipts be destroyed or discarded before the Foundation has accepted the audit report of its auditors.
- (2) Sodexo shall use such point of sale systems and other automatic cash counting equipment as is reasonably necessary to record all Gross Receipts properly and accurately. All such systems shall be subject to the prior approval of the Foundation. Foundation shall have the right, upon reasonable notice, to inspect such equipment.
- (3) The Foundation shall have the right to audit, upon the giving of ten (10) days written notice to Sodexo, all books and records (in whatever form they may



be kept, whether written, electronic or other) relating or pertaining to this Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Sodexo, including, but not limited to those kept by Sodexo, its employees, agents, assigns, successors and subcontractors to the extent necessary to verify Sodexo's compliance with the terms of the Agreement. Sodexo shall maintain such books and records, together with such supporting or underlying documents and materials, for the Term and for at least four (4) years following the completion of this Agreement, including any and all renewals thereof. Such books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the Foundation, through its employees, agents, representatives, contractors or other designees, during normal business hours in Virginia Beach, Virginia.

- (4) If the confirmed result of any such audit establishes that Sodexo has overpaid the Foundation, such overpayment shall be credited against payments currently payable to the Foundation. If the audit reveals an underpayment to the Foundation, Sodexo shall pay to the Foundation a sum equal to the amount of the underpayment. In the event that a shortfall in excess of five percent (5%) is found to exist, Sodexo shall, within twenty (20) days, reimburse the Foundation for the amount of the shortfall, including interest. Sodexo shall also be responsible for the actual cost of the audit and any costs or expenses incurred by Foundation as a result of the shortfall, up to a maximum of Five Thousand Dollars (\$5,000.00). In addition to the foregoing audit, the Foundation shall have the right at any time, to have an independent audit of Sodexo's Gross Receipts performed at the Foundation's expense; provided, however, that in the event a shortfall in the amount owed for the period covered by the audit in excess of five percent (5%) is found to exist, Sodexo shall within twenty (20) days reimburse the Foundation for the amount of the shortfall, including interest, together with: (1) the actual cost of the audit and (2) any costs or expenses incurred by Foundation as a result of the shortfall up to a maximum of Five Thousand Dollars (\$5,000.00).
- (5) The records referenced above shall be available for routine inspection and audit by the Foundation's representatives at any time during the Term and for four (4) years thereafter during reasonable business hours and upon reasonable, if not otherwise specified, notice. The routine audits and inspections referred to herein shall not be conducted more frequently than twice in any single twelve-month period; provided that the Foundation shall have the absolute right to conduct special audits whenever it deems such



audits to be reasonably necessary or reasonably appropriate. The Foundation may conduct, at its own expense, secret shopper visits that include areas used by Sodexo results will be reported to Sodexo.

(6) Sodexo shall use International Financial Reporting Standards not inconsistent with Generally Accepted Accounting Principles (GAAP) within the United States, consistently applied, to identify and track Sodexo's compliance with the financial provisions of this Agreement.

(l) *Accounts Receivable.* Unless otherwise mutually agreed, Sodexo shall be solely responsible for all billing and collection of accounts receivable for Catering services provided to groups not affiliated with the Foundation or the Aquarium.

XI. Personnel

(a) *Generally.* Sodexo shall employ and supervise such personnel as shall be necessary for the efficient performance of its obligations under this Agreement. Such personnel shall be subject to pre-employment security checks and screening by Sodexo in accordance with the provisions of Section XXIX.

(b) *Supervision.* Sodexo shall perform the Services required by this Agreement under the supervision of an on-site, full time resident general manager. The Foundation may participate in the selection of such manager and any other key management or supervisory personnel of Sodexo located at the Aquarium, and such personnel shall, at the written request of the Foundation, be promptly removed from the premises of the Aquarium provided such request does not violate any applicable employment laws.

(c) *Requirements and Standards.* Sodexo's employees shall meet the employment requirements and standards that Sodexo establishes, as amended from time to time, including, without limitation, a comprehensive employee training program to ensure that such employees perform their jobs in accordance with the quality standards of the Foundation. Sodexo shall establish the requirements of employment, provided that the Foundation shall have an opportunity to review and comment on any such requirements.

(d) *Employee List.* Sodexo shall provide the Foundation with a current list of all of Sodexo's employees at the Aquarium, whether full-time or part-time, at least once every thirty (30) days.

(e) *Dress and Grooming.* All Sodexo employees shall be neatly dressed and groomed, shall be free of communicable diseases, and to the extent required by local, state, or federal law, shall have a valid Food Handlers Permit issued by the Virginia Department of Health.

(f) *Identification Badges.* Upon receipt of Sodexo's certification of an employee's compliance with all requirements under this Section, the Director shall issue an identification badge to each of Sodexo's employees. Upon the suspension or termination of a Sodexo employee, Sodexo



shall notify the Director of such fact, and the Director shall suspend or cancel the identification badge of such employee.

(g) *Communicable Diseases.* Sodexo shall immediately notify the Director, in writing, of all cases of communicable diseases, skin infections, or food borne illnesses contracted by its employees affecting the Services provided to Foundation or, if aware, by patrons of Aquarium facilities. Sodexo shall promptly report to the Foundation the details of any such case, the action it has taken to remedy the case, as well as the action it has taken to prevent recurrence. Sodexo shall maintain a weekly food incident log. Foundation retains the right to review the log at any time.

(h) *Labor Disputes.* Whenever Sodexo has knowledge that any actual or potential labor dispute involving employees or vendors has delayed, is delaying or threatens to delay the timely performance of its obligations under this Agreement, Sodexo shall immediately provide written notice thereof, including all relevant information, to the Director.

(i) *Emergency Training.* Sodexo shall train its employees to respond to fire, civil defense, bomb threats, and other emergencies based on procedures established by Sodexo and the Aquarium.

(j) *Public Perception.* Sodexo acknowledges that visitors to the Aquarium perceive Sodexo's employees as representatives of the Aquarium, and that the conduct and appearance of such employees directly affect the public image and reputation of the Aquarium. Upon the written request of the Foundation, Sodexo shall promptly remove from the premises of the Aquarium any Sodexo employee whose dress, grooming, attitude, performance or conduct fails to meet applicable standards set forth in this Agreement or is deemed by the Foundation to be objectionable or inappropriate, provided such request does not violate any applicable employment laws and is administered in accordance with Sodexo's personnel policies.

(k) *Non-management Employees.* In performing the Services hereunder, Sodexo's non-management employees shall be neatly attired consistent with similar first-class quality family attractions in the Hampton Roads, Virginia area, utilizing attire that shall be subject to the prior review and approval of the Foundation, which approval shall not be unreasonably withheld, delayed or conditioned. Sodexo shall, at its expense, require all such employees to wear badges or identification tags. The Foundation may require employees of Sodexo working at the Aquarium to wear uniforms approved by the Director and bearing the name and logo of the Aquarium.

(l) *Event Staffing.* Sodexo shall provide staffing at all Aquarium private events to ensure the highest level of event execution, to include greeting and directing guests, ensuring the safety of exhibits and guests, and monitoring the security of the building, throughout the duration of each event per Foundations written standards.

(m) *Medical Examinations.* To the extent required by federal, state, or local law, all Sodexo employees involved in the handling, preparation or serving of food shall, prior to beginning work at the Aquarium, receive, at Sodexo's expense, medical examinations of a type and scope consistent with examinations normally required of personnel who prepare, handle, or serve food

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at public amusement, entertainment and recreational-type venues in the City of Virginia Beach. The failure of Sodexo to have such examinations promptly performed on each employee shall be cause for the immediate removal of such employee or group of employees from the premises of the Aquarium. Sodexo shall certify to the Foundation that such examinations have been performed and that its employees are in full compliance with all applicable medical standards.

XII. Nonsegregated Facilities

Neither Sodexo nor its subcontractors shall maintain or provide for its employees any segregated facilities at any of its establishments, and shall not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Breach of this clause by Sodexo shall constitute a violation of this Agreement. As used in this provision, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, wash rooms, restaurants or other eating areas, time clocks, locker rooms or other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, or housing facilities provided for employees, that are segregated on the basis of race, color, religion, age, disability, marital status, or national origin.

XIII. Equal Opportunity

Neither the Foundation nor Sodexo shall discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. Sodexo shall take affirmative action to ensure that all employment practices are free of such discriminations. Such employment practices include, but are not limited to, hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, selection, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

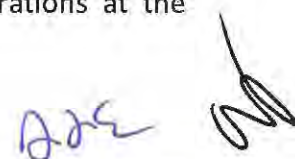
XIV. Drug-Free Workplace

It is the policy of the Foundation to maintain a drug-free workforce and workplace. The Foundation and Aquarium strictly prohibit the use, possession, consumption, exchange, delivery, manufacture, distribution, dispensation, sale or purchase of any illegal drug or legal prescription drug without a valid prescription on City of Virginia Beach property, which includes Aquarium buildings, carts grounds and vehicles, or wherever work is being performed under this Agreement by Sodexo.

XV. Compliance with Laws

(a) *Generally.* Sodexo shall at all times comply in all respects with all applicable local, state and federal laws, ordinances and regulations applicable to its performance under this Agreement and shall obtain all permits or licenses necessary for its operations.

(b) *Inspection Reports.* The parties shall provide each other with copies of all health, safety or environmental inspection reports relating in any way to Sodexo operations at the



Aquarium that are received by either from any federal, state or local governmental authority or body.

(c) *OSHA Compliance.* Sodexo shall cause its employees, agents, contractors, and subcontractors to give access to the authorized representatives of any governmental agency for the purpose of inspecting and/or carrying out any of such agency's duties under the Occupational Safety and Health Act of 1970, as amended, or any similar state or local law pertaining to employee safety. Sodexo shall notify the Foundation within twenty-four (24) hours of any such inspection or action and the results of the same. Sodexo shall be responsible for any violation by it of any such law or regulation applicable to any area being occupied or used by Sodexo and shall immediately remedy any conditions giving rise to such a violation. Sodexo shall be responsible for its violations under the said laws in Food Service Areas and any other parts of the premises under its sole care, custody and control, and shall immediately remedy any conditions giving rise to such violation. Sodexo shall defend and hold the Foundation harmless from any fine, penalty, or liability in connection therewith.

XVI. Training and Supervision

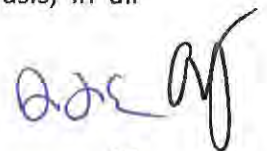
(a) *Generally.* Sodexo shall train and closely supervise all of its employees so that they are aware of the high standards of cleanliness, courtesy, safety and service required by the Foundation, Aquarium and Sodexo.

(b) *Alcohol Awareness Training.* Sodexo shall train all of its employees involved in the sale and service of alcoholic beverages in effective alcohol awareness, which includes training based on all applicable laws and regulations of the Virginia Department of Alcoholic Beverage Control. Such training may include, without limitation, policies and procedures developed by Sodexo dealing with alcohol management and a nationally recognized program such as "Techniques for Effective Alcohol Management ("TEAM") or "Techniques for Intervention Procedures by Servers of Alcohol" ("T.I.P.S.").

(c) *Orientation.* Sodexo shall ensure that all of its regular full and part-time management and hourly staff receive the same Aquarium orientation as Aquarium employees, guides and volunteers in order to familiarize the Sodexo staff with the Aquarium. Sodexo shall be responsible for the payment of any salary or wages due its employees as the result of such orientation.

XVII. Cleaning and Janitorial

(a) *Generally.* Within the Foodservice Areas, Sodexo shall be responsible for the nightly cleaning of all public floors in the dining, serving, and common areas, and for the cleaning of inside windows, mirrors, and pillars. Sodexo shall also be responsible for the cleaning of the kitchen, storage, and office floors in the Foodservice Areas. Unless the parties agree otherwise, the Foundation is responsible for the routine shampooing of carpets, on a quarterly basis, in all



Foodservice Areas. Sodexo shall, on reasonable advance notice, remove all furniture and equipment in the carpeted areas in preparation for cleaning. The Director shall coordinate with Sodexo on determining and applying required standards.

(b) *Regular Cleaning.* Sodexo shall be responsible for the regular cleaning during open hours of all Foodservice Areas, to the extent necessary to ensure that they are clean, orderly, free from trash and debris, and constantly maintained in an attractive and sanitary environment. To that end, Sodexo shall be responsible for maintaining sanitation of all Loose Equipment, FF&E, kitchens, preparation areas, storage, office areas, walls, light fixtures, carts, trash receptacles, dining tables and chairs in a clean and sanitary condition at all times.

(c) *Exhaust Hood.* Sodexo shall be responsible for the daily exterior cleaning of all the exhaust hoods used in its kitchen operations. In coordination with the Foundation, Sodexo shall arrange for duct and flue cleaning, maintenance and testing of the fire suppression systems, and for the interior cleaning of all exhaust ducts, the cost of which shall at the sole cost of Sodexo.

XVIII. Repairs, Replacement and Maintenance

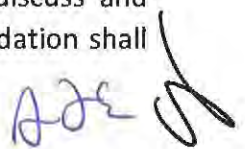
(a) *Plumbing.* With the exception of sanitary sewer, Sodexo shall be responsible for the repairs, maintenance, replacement of all plumbing fixtures; Sodexo shall be responsible for the first \$250 (Two Hundred Fifty Dollars) of all repairs and maintenance, cleaning of backups and regular preventative maintenance of all drains and drain lines incident to Sodexo's performance pursuant to this Agreement.

(b) *Furniture, Fixtures and Equipment (FF&E).* Sodexo shall clean, at its sole expense, all FF&E in all Foodservice Areas and shall be responsible for the maintenance, repair or replacement of all equipment.

(c) *Electrical.* The Foundation shall be responsible for maintenance, repair or replacement of electrical distribution system, C breakers, panel, transformers, wiring and receptacles, unless repair or replacement thereof is caused by the negligence or intentional misconduct of Sodexo's employees, subcontractors or agents, in which event such repair or replacement shall be at Sodexo's sole cost and expense.

(d) *Building Repairs/Renovations.* Except as otherwise provided in this Section, the cost of all maintenance, repairs, alterations, improvements, renovations or replacements to Foodservice Areas shall be paid by Sodexo and approved in advance by the Foundation.

(e) *Pest Control.* Sodexo shall employ a licensed and qualified pest control provider at its sole expense to provide pest control within Foodservice Areas and shall provide a copy of all pest inspection reports to the Foundation on a monthly basis. The Foundation may require Sodexo to arrange additional pest control treatments or service at Sodexo's sole cost, if pest control within the Foodservice Areas becomes a problem due to a Sodexo Cause. The Foundation reserves the right to employ an independent hygienist to evaluate pest control procedures and recommend any improvements or changes it deems necessary. Sodexo and the Foundation shall discuss and evaluate compliance with reasonable recommendations of such hygienist. The Foundation shall



arrange for the sealing of any openings that in the opinion of the hygienist may allow pests to access Foodservice Areas.

(f) *Painting.* The Foundation shall be responsible for painting and touch-up of Foodservice Areas at its expense, unless such painting is necessitated by the negligence or intentional misconduct of the agents, employees, or contractors of Sodexo, in which event the cost shall be paid by Sodexo.

(g) *Walls.* Sodexo shall clean all walls within all Foodservice Areas. In coordination with the Foundation, Sodexo is responsible for replacing wallpaper and other wall surfaces, repairing or replacing the trim as required, and all plaster repairs within all Foodservice Areas, and all cart/kiosk areas.


(h) *Tile work.* Sodexo shall clean all tile work and rubber floor trim, caulking and tile within all Foodservice Areas. The Foundation shall otherwise maintain, repair or replace all tile work within Foodservice Areas, unless such work is required as a result of the negligence or intentional misconduct of Sodexo employees, subcontractors or agents, in which event Sodexo shall pay for such maintenance, repair or replacement.

(i) *Doors and Windows.* Sodexo shall clean all doors and windows within all Foodservice Areas. The Foundation shall otherwise maintain, repair or replace all doors and windows within Foodservice Areas, unless such work is required as a result of the negligence or intentional misconduct of Sodexo employees, subcontractors or agents, in which event Sodexo shall pay for such maintenance, repair or replacement.

(j) *Carts and Cart Storage.* Sodexo shall secure all required licenses and permits covering the operation of all carts at its expense and shall at all times maintain the carts in good repair and in a clean and sanitary condition. Carts shall be properly stored in a secure location approved by the Director when not being used. Except as otherwise provided in this Agreement, if there is damage to Foundation property as a result of carts not being kept in good repair by Sodexo or not properly stored, Sodexo shall pay for the necessary repair or replacement of such property.

(k) *Loading Area.* Sodexo shall be responsible for receiving its deliveries and keeping the loading dock and loading areas free from food delivery debris when its deliveries arrive. Sodexo shall be responsible for all trash removal from dining areas, trash compacting associated with its Services and the placement of all such trash into dumpsters provided by the Foundation.

(l) *Recycling of Waste Materials.* Sodexo shall, at no cost to the Foundation, collect, sort, and separate into such categories as may be legally required or required by the Director, all solid waste and food products, and recycle or compost all such products that are locally accepted for recycling, composting or reuse. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the Director. Cardboard recycling dumpsters shall be used for all cardboard. Sodexo shall break down all boxes before disposing of

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them in a dumpster. Sodexo agrees to comply with all written Aquarium rules and regulations relating to recycling and conservation that have been provided to Sodexo.

(m) *Trash collection.* The Foundation shall, at its sole expense, provide for solid waste collection at regular intervals by the City of Virginia Beach or a private solid waste collection firm.

(n) *Sewer Use; Fats, Oils and Grease (FOG).* Sodexo shall be responsible, at its sole expense, for compliance with all applicable requirements of Article 4 of Chapter 28 of the Virginia Beach City Code ("Use of the Public Sewer System"), including, but not limited to, provisions pertaining to the required maintenance of grease control devices. Sodexo shall indemnify the Foundation for any penalties or fines that may be imposed for violation of the aforesaid provisions.

XIX. Sodexo's Operational Responsibilities

(a) *Hours of Operation.* With the exception of vending machines and catering services provided under contract with third parties, Sodexo shall provide food and beverage services as contemplated by this Agreement on every day that the Aquarium is open to the public and in accordance with the operating days and hours set forth on Page 89 of the Sodexo Response. The hours of operation may be changed from time to time by written agreement of the parties.

(b) *Mobile Cart Program.* Sodexo, with the concurrence of the Foundation and the Director, shall place mobile carts at designated locations on the Aquarium grounds in order to maximize sales and guest service, taking into account visitor attendance levels, weather and other appropriate factors.

(c) *Temporary Sales at Gift Shop.* Until the renovation of the Marsh Pavilion is completed in 2019, and thereafter as set forth in the Sodexo Response, the Foundation may offer bottled water and packaged snacks for sale at the Aquarium gift shops. In addition thereto, specialty food items sold as souvenirs, such as locally-produced honey, may at all times during the term of this Agreement be offered for sale at the gift shops by the Foundation.

(d) *Food Quality and Service.* All food and beverages offered for sale by Sodexo shall be of a quality and at prices at least equal to similar items offered for sale to the public at comparable family public attractions, restaurants, and banquet facilities in the Hampton Roads Area. Sodexo shall not offer for sale any food or beverage items which are spoiled, of poor or questionable quality or otherwise unfit for consumption and any such items immediately shall be removed from any Foodservice Area. Sodexo shall provide effective and convenient Services for Aquarium attendees and Foundation staff, volunteers and members. All food, drinks, beverages, confections and other items sold or kept for sale at the Foodservice facilities and carts shall be first quality, wholesome and pure, and will conform in all respects to applicable federal, state and city regulations. Sodexo shall not change or modify the style of service to customers without the Foundation's prior written approval. No disposable lids or straws will be used at any time at the Aquarium without the Director's prior written permission.



(e) *Vending Machines.* Sodexo shall, with the approval of the Director, place vending machines at designated locations on the premises of the Aquarium, with the objective of improving sales and guest service, and consistent with reasonable judgment taking into account visitor attendance levels, weather and other appropriate factors.

(f) *Operation/Performance Standards and Inspection.* Sodexo shall conduct regular inspections, at least monthly, of all Foodservice Areas and carts using the inspection form agreed upon by the parties and shall provide a copy of all such reports to the Director within five (5) days following the end of each calendar month. Sodexo may use its own or a different inspection form with the prior written approval of the Director. The Foundation reserves the right to inspect all areas.

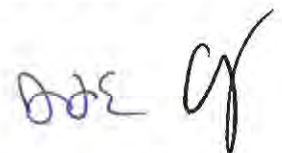
(g) *Table Service and Bussing.* Sodexo shall at all times provide sufficient staff in the Foodservice Areas to ensure reasonably quick and efficient service to all Aquarium patrons. Sodexo shall also provide staff for bussing tables continuously within the Foodservice Areas and any other point of sale approved by the Foundation during all open business hours.

(h) *Performance Reviews.* The Sodexo executive who directly supervises its onsite general manager at the Aquarium shall be available as needed to support Sodexo operations at the Aquarium, and shall meet at least quarterly during the term of this Agreement with representatives of the Foundation and the Aquarium for the purpose of reviewing performance and discussing problems.

(i) *Pricing.* All prices for food and beverage items offered for sale shall be posted on display or on menus. A list of menu prices and portions shall be provided to the Foundation within thirty (30) days of the execution date hereof. All prices shall thereafter be set and established in the manner set forth below at the beginning of each Contract Year. The final quarter of each Contract Year shall be the time during which new pricing, to be effective as of April 1 of each year, is reviewed. No less than annually, Sodexo and the Foundation shall review pricing for adjustments which shall be subject to the mutual agreement of the Parties.

(j) *Discounts.* The Foundation and Aquarium employees and volunteers shall receive a fifty per cent (50%) discount, and Aquarium Members shall receive a ten percent (10%) discount, on food and non-alcoholic beverage purchases at all foodservice points-of-sale at the Aquarium.

(k) *Catering Menu Pricing.* Sodexo shall separately provide the Foundation, within thirty (30) days of the Effective Date, with a true and correct list of menus, menu prices, terms and conditions that will initially be applicable for Sodexo Catering services under this Agreement. The information contained on the list shall be for informational purposes only and shall be subject to change. Sodexo agrees and warrants that the pricing on its catering menu list will be representative of the pricing to be charged for the Catering menu items and services, and such menus and pricing will be comparable to similar public attractions, restaurants and banquet facilities in the Hampton Roads area. Sodexo shall, at least annually, survey the menus and pricing for at least four (4)



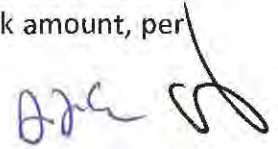
competitive special event venues in the Hampton Roads area and provide the written results of such surveys to the Foundation.

(l) *Custom menu pricing.* In addition to the menus included on the catering menu list, Sodexo may provide third party groups and organizations and the Foundation with custom menus and services for catered events. All such custom menu pricing shall be comparable to pricing for similar menus on the catering menu list. In the event a custom menu price significantly varies from that set forth on the catering menu list, Sodexo shall provide the Foundation, upon request, with documentation showing justification for the price differential.

(m) *Foundation-sponsored catering.* The catering menu list referred to in paragraph (d) herein shall include a "Foundation/Aquarium Meeting and Break Service Menu and Price List." Sodexo agrees to develop such menu, price list and ordering terms and conditions to include all food, beverage and related items, including linens, supplies, equipment and delivery, in cooperation with the Foundation and Aquarium. The purpose of such menu is to provide a complete and comprehensive menu, pricing and ordering guide that will accommodate the majority of the day-to-day Foundation-Sponsored catering and third party groups and organizations.

(n) *Brochures and Surveys.* Sodexo shall provide sales and marketing brochures and marketing materials for Catering services offered by Sodexo at the Aquarium ("Marketing Materials"). All Marketing Materials shall be subject to the Foundation's prior review and written approval. Sodexo shall also make comment cards available to Aquarium guests. The comment cards may be changed from time to time by agreement of the parties. The initial form of such comment cards, and any amendments thereto proposed from time to time, shall be subject to the agreement of the parties. The Foundation may, at its expense, use focus groups and intercept surveys involving such individuals and groups at such intervals as the Foundation may determine to be appropriate. Sodexo shall provide the Foundation with recommendations based on the results of focus groups, intercept surveys and mystery shopping within twenty (20) days of receipt of report(s) covering such activities. The Foundation reserves the right to employ one or more independent market research companies, at its expense, for the purpose of measuring the level of satisfaction with the Services provided by Sodexo among the various individuals and groups using such Services. In the event the Foundation employs such a company, Sodexo, the Foundation and the company shall agree upon baseline criteria by which to measure and evaluate Sodexo's Services. Following the completion of the initial survey and report, the Foundation may order follow-up reports no more frequently than quarterly. If any such follow-up report deviates negatively in a significant manner from the applicable baseline criteria, Sodexo shall prepare and implement an action plan to improve such Service.

(o) *Monthly Meetings.* A designated representative of the Foundation shall meet with Sodexo's on-site general manager at least monthly to discuss service and quality issues, pricing issues, customer service complaints/compliments, and any other concerns. Sodexo's on-site general manager shall report to the Foundation on customer counts, average check amount, per



capita spending, performances per department, and any other information requested by the Foundation that is relevant to this Agreement. Minutes documenting the information shared and decisions made in each of these meetings, shall be prepared by Sodexo within five (5) business days following each meeting.

(p) *Notice of Health Code Violations.* Sodexo shall provide the Foundation, immediately upon receipt, with copies of any reports, citations or notices from the Virginia Department of Health or any other governmental agency having jurisdiction over laws or regulations pertaining to health, safety, or foodservice operations, as well as copies of any Sodexo field inspection and action reports prepared in response thereto.

(q) *Change and Petty Cash Funds.* Sodexo shall own the change and petty cash funds and be solely responsible for their safekeeping.

(r) *FF&E and Loose Equipment Listings.* Sodexo shall replace all Loose Equipment as it becomes worn, lost or damaged in quantities and quality at least equal to the amount originally supplied by the Foundation. In the event of termination of this Agreement for any reason, Sodexo shall return to the Foundation all FF&E and Loose Equipment furnished by the Foundation in as good a condition as when initially delivered to Sodexo, normal wear and tear excepted. Attached hereto are the following exhibits:

- (1) Exhibit A: all Foundation-owned FF&E and Loose Equipment as of the commencement of the Contract Services Term;
- (2) Exhibit B: all Sodexo-owned FF&E and Loose Equipment that will be brought to the Aquarium at Sodexo's expense at or prior to the Effective Date;
- (3) Exhibit C: all equipment provided by Sodexo vendors under a loan or lease agreement as of the Effective Date; and
- (4) Exhibit D: Existing Equipment to be purchased by Sodexo pursuant to the provisions of subsection (a) of Section IV. This Exhibit shall be completed subsequent to the execution of this Agreement and shall be appended to this Agreement by executed amendment upon completion thereof.

The foregoing Exhibits may be updated and revised as necessary in order to correct inaccuracies. Thereafter, an annual inventory may, at the election of the Foundation, be taken by the parties, or a person or firm selected by mutual agreement of the parties, at a mutually agreeable date and time. Exhibits A and B shall be updated, based on such inventory. From time to time, the parties may wish to purchase FF&E and Loose Equipment, subject to terms and conditions to be determined by mutual agreement.

(s) *Energy Star.* Any appliance or other equipment installed or replaced by Sodexo or provided by Sodexo vendors during the term of this Agreement shall conform to the current Energy Star specifications applicable to such appliance or other equipment in effect as of the Effective

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Date or such successor specifications as may be in effect at the time of replacement, whichever promote greater energy efficiency. Energy Star features shall be enabled.

(t) *Conformity with Sodexo Response.* Sodexo shall conform to the standards and practices specified in Section C (Proposed Aquarium Services) of the Sodexo Response, which are hereby incorporated by reference as if fully set forth herein; provided, however, that in the event of a conflict between a provision of this Agreement and a standard or practice described in the Sodexo Response, the provision of this Agreement shall control.

(u) *No Liens or Encumbrances.* Sodexo shall keep the Foodservice Areas and FF&E free and clear of any liens and encumbrances arising out of or resulting from their use pursuant to this Agreement. At the request of the Foundation, Sodexo shall deliver to it written proof of the payment of any item that could be the basis of such a lien, if not paid.

(v) *Sustainable Practices.* Sodexo shall work with Aquarium staff to develop and implement a plan to eliminate or reduce waste, to include the reduction of single-use plastics, recycling, and composting.

(w) *Access to Foodservice Areas.* Representatives of the Foundation shall have the right to enter upon and have access to all Foodservice Areas during the time that events are in operation and at all times when Sodexo's employees are present. In addition, Sodexo shall provide the Foundation and its contractors and consultants, their subcontractors, sub-consultants, and agents with access to the Foodservice Areas at all reasonable times to inspect the same and to make any inspection, repair, or improvement deemed necessary by the Director, but this right of access shall not impose on the Foundation any obligation to make any repair, alteration, addition, or improvement except as specifically provided in this Agreement.

XX. Responsibilities of Foundation

(a) *Modifications/Alterations to Foodservices Area.* Any modification or alteration to the Foodservices Area, whether structural or non-structural, that becomes necessary to comply with any statute or governmental regulation shall be the responsibility of the Foundation and shall be at the Foundation's expense.

(b) *Access to Foodservices Area.* Sodexo's employees, subcontractors, and agents shall be given reasonable access to the Foodservices Areas in advance of the Effective Date in order to prepare for the Services to be provided under this Agreement.

(c) *Utilities and HVAC.* To the extent capacity exists and is available, the Foundation shall furnish Sodexo with electrical connections at all permanent and temporary foodservice locations sufficient to permit Sodexo to use and operate electrical, and gas connections at the Osprey Grill/Watershed Market to permit Sodexo to use and operate gas equipment currently and customarily used for foodservice sales and services. The Foundation shall provide electrical current and gas used by Sodexo in connection with its normal and customary operations under this Agreement. The Foundation shall provide heat and air conditioning in all Foodservice Areas and

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shall furnish Sodexo with adequate potable hot and cold water supply, appropriate drainage and sewage facilities to permit Sodexo to provide the Services hereunder in a normal and customary manner. In the event Sodexo is negligent in the use of any of these utilities, it shall be responsible for the cost of related repairs or for excessive usage. If any of the utility services provided by Foundation are interrupted due to the need for maintenance and repair to utility lines, the Foundation will immediately notify Sodexo of such interruption and arrange for the restoration and repair of the lines and conduits in an expeditious manner, with the objective of restoring service at the earliest practicable time. Sodexo shall, its sole expense shall be responsible for any and all network connectivity and costs including but not limited to wiring switches, and associated equipment routers, modems.

(d) *Vehicular Parking.* The Foundation shall provide free, on-site vehicular parking for Sodexo employees and Sodexo-owner vehicles. Sodexo agrees that its employees will use only the parking areas designated by the Director for Sodexo use, and that its employees and agents shall use this parking in accordance with the parking policies that apply to Aquarium employees. The Foundation shall provide Sodexo with a written copy of such policies.

(e) *Office Space.* The Foundation shall provide Sodexo with office space suitable for one (1) person at the Aquarium.

XXI. Product Servicing Rights

(a) *Exclusivity.* The Foundation shall have the exclusive right to enter into product servicing rights agreements with respect to all food and beverage products that give a particular manufacturer or distributor the exclusive right to distribute its product on the premises of the Aquarium. Sodexo agrees to introduce the Foundation to Sodexo food and beverage vendors that are interested in having their products exclusively served or sold at the Aquarium. In the event of such introductions, the Foundation and Sodexo shall mutually agree on financial arrangements between Sodexo and vendor applicable to the Aquarium.

(b) *Foundation Requests.* In the event the Foundation requests Sodexo to use any food and/or beverage item covered under this Section, the Foundation agrees that the quality of such items shall at least be equal to the quality of similar products used by Sodexo.

(c) *Pricing.* The pricing to Sodexo of any products covered under this Section shall be comparable, for like items, to products that Sodexo can secure through its own vendors and suppliers. Sodexo shall, upon the Foundation's request, provide the Foundation written documentation from its vendors in this regard.

(d) *Discounts, Rebates, etc.* Prompt payment discounts and any other rebates or allowances obtained from vendors, suppliers, or distribution companies, including those obtained through Sodexo's national or regional purchasing arrangements based on its total purchases ("Sodexo Allowances"), shall be retained by Sodexo.

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XXII. Insurance

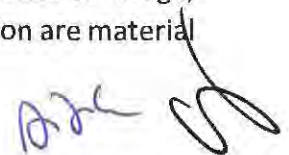
(a) *Insurance Requirements.* During the term of the Agreement, Sodexo shall at all times maintain the following minimum insurance coverage:

- (1) Workers Compensation Insurance as required by the Code of Virginia;
- (2) Comprehensive General Liability insurance, including contractual liability and products and completed operations liability coverage with limits no less than Five Million Dollars (\$5,000,000.00) per occurrence combined single limits (CSL);
- (3) If Sodexo owns motor vehicles and the operation of its business involves such vehicles, Sodexo shall maintain Automobile liability insurance coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence combined single limit (CSL). This coverage shall include non-owned and hired, as well as owned motor vehicles; and

(b) *Options.* Sodexo may meet insurance requirements through separate, combination, or package policies if those policies meet the required limits and the required scope of coverage. Umbrella and/or excess policy limits may be accepted to meet the required limits and the required scope of insurance. Sodexo or its insurance broker shall provide the Foundation with certificates of insurance evidencing such policies and, upon reasonable advance notice, the Foundation may examine the original copies of such policies at Sodexo's corporate offices in Gaithersburg, Maryland. Sodexo or its insurance broker shall promptly notify the Foundation of any material change to any such policy and provide an updated certificate of insurance.

(c) *Carrier.* Insurance coverage required under this Agreement shall be procured from a company or companies authorized to transact business in the Commonwealth of Virginia with a rating by A.M. Best & Company of A- or above. All such policies shall cover the Foundation, its Board of Directors and officers, the City of Virginia Beach and its officers and employees as additional insureds and shall include or provide coverage for liability assumed under this Agreement. All such insurance policies shall be primary and non-contributory as to any insurance of Sodexo. The policies shall include a provision that the insurer shall provide at least thirty (30) days' notice of cancellation to the insured, if they intend to cancel the policy prior to the expiration date. Sodexo shall also procure a new policy or policies having coverage no less than is required by this Agreement.

(d) *Additional Requirements.* Payment of all deductibles or other forms of retention specified in any insurance policy provided by Sodexo shall be the responsibility of Sodexo. No later than thirty (30) days after the Effective Date, Sodexo shall furnish the Foundation with certificates of insurance that evidence the required insurance. Within thirty (30) days of the expiration of any insurance coverage required by this Agreement, Sodexo shall provide the Foundation with certificates of insurance that evidence renewal or continuation of the required insurance coverage; and (iii) Sodexo acknowledges that the insurance requirements set forth in this Section are material



terms of this Agreement, and that Sodexo's failure to strictly comply with such requirements shall constitute a material breach of this Agreement for which the Foundation may terminate this Agreement for cause.

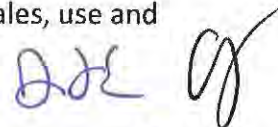
(e) *Foundation Insurance Requirements.* The parties acknowledge that the City of Virginia Beach owns all Aquarium structures and grounds and maintains adequate Liability and Loss insurance coverage thereon. Proof of such insurance shall be provided upon request of Sodexo.

XXIII. Licenses and Permits; Fees and Taxes

(a) *Generally; Termination/Expiration of Agreement; Violations.* Sodexo shall obtain, maintain and display where required, at its sole cost, all required licenses and permits except as otherwise provided in this Agreement. The Foundation shall cooperate with Sodexo in obtaining such licenses and permits. Upon expiration or termination of this Agreement for any reason, and upon the Foundation's request, to the extent permitted by law and subject to such terms or conditions as may be specified by the Foundation, all licenses and permits held by Sodexo for the purposes of performing its duties under this Agreement shall be transferred, at Foundation's expense, to the Foundation or to the Foundation's designee(s). Sodexo shall use its best efforts to effect such transfers and assignments promptly and shall execute all documents and take such other actions as may be necessary to effect such transfers and assignments at any time requested by the Foundation, with the objective of making such transfers or assignments effective upon the effective date of expiration or termination of the Agreement. Any fine or penalty assessed against or imposed upon Sodexo as a result of a violation of federal, state or local law or any condition of any such license or permit shall be the sole responsibility of Sodexo, and Sodexo shall hold the Foundation harmless from the same, including payment of attorney's fees and other costs of defense. The parties agree to execute any and all documents necessary under federal, state or local laws to obtain, maintain, display and transfer all such permits and licenses.

(b) *Suspension or Revocation of Alcoholic Beverage License.* In the event any of Sodexo's Alcoholic Beverage Control Licenses pertaining to the Services are revoked or suspended as a result of any violation of law or the terms and conditions of the license, by reason of the acts or omissions of any of its officers, agents or employees, or for any other cause for which the Foundation is not responsible, Sodexo shall be deemed to be in default under this Agreement. In event of the suspension or revocation of such license is caused by the actions of the Foundation or by any other cause beyond Sodexo's control, the Foundation shall have the right to suspend Sodexo's rights hereunder but only with respect to the provision of Alcoholic Beverage Services which otherwise would be allowed under the suspended or revoked license, so that Sodexo shall continue to provide the Services in all other respects. In the event Sodexo is not able, through no fault of its own, to sell alcoholic beverages at the Aquarium, the Foundation agrees to renegotiate the Commission as set forth in this Agreement. In the event the parties cannot agree on revised Commission, either party shall have the right to terminate this Agreement.

(c) *Payment for Permits and Licenses; Taxes.* Sodexo shall timely remit all applicable federal, state and local license and permit fees, and shall collect and timely remit all sales, use and



other taxes, arising out of the provision of the Services under this Agreement. Sodexo shall also collect sales taxes applicable to purchases billed to the Foundation.

XXIV. Independent Contractor

The parties acknowledge that Sodexo is an independent contractor pursuant to this Agreement and not an employee or agent of the Foundation. Neither the Foundation nor Sodexo is in any respect an agent, officer or employee of the other, and no officer, agent or employee of either party, or any person acting on behalf of either of them shall act or represent himself as, an agent, employee or officer of the other. Sodexo assumes full responsibility for the actions of such personnel while performing services pursuant to this Agreement and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding and income taxes, unemployment insurance, workers' compensation, and Social Security) and the like, as required by applicable federal, state or local laws.

XXV. Casualty Loss

In the event the Aquarium, or any part thereof, is partially destroyed by fire, windstorm, flood, or other casualty and such partial destruction materially affects the ability of Sodexo to provide the Services, the Foundation shall exercise reasonable diligence to restore or cause to be restored such damaged portions thereof, so that the Services may be resumed as promptly as possible. If complete operation of the Aquarium must be suspended due to any such casualty and full operation is not resumed within ninety (90) days from the date of such suspension, either party shall have the right to terminate this Agreement by providing the other with sixty (60) days prior written notice of its intention to do so.

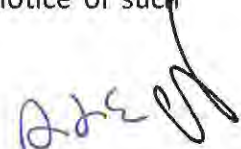
XXVI. Force Majeure

Neither party shall be obligated to perform any non-monetary act required hereunder and neither party shall be deemed to be in default if its performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion, or other occurrence or condition of a like nature; or (ii) by any law or act of any public or military authority resulting in the existence of economic controls, riot, hostilities, war, terrorism, or governmental policy.

XXVII. Termination and Remedies


(a) *Termination for Cause.* Either party may terminate the Agreement upon the occurrence of a material breach or default by the other of any term or condition of this Agreement, and the continuance of any such default for a period of ninety (90) days after written notice by the non-defaulting party of the same. In addition to any other act or omission deemed to be a material breach or default in this Agreement, a material breach or default under the Agreement shall include, but not be limited to:

- (1) The failure to remit any amount due and payable hereunder and such failure to pay is not remedied within ten (10) days after written notice of such failure has been given to the defaulting party.



- (2) The cessation of operations or voluntary abandonment of any portion of the Aquarium by either party. In the event Sodexo ceases operations during the term of the Agreement, in addition to any other remedies under this Agreement or under the law, the Foundation may at its option and without serving the notice otherwise required in this Section, take immediate possession of the Food Service Area and, in its discretion, terminate this Agreement and enter into a food/beverage service Agreement with another party;
- (3) The failure to secure all necessary decrees, acts, orders, consents, licenses, certificates, permits and insurance necessary to comply with obligations under this Agreement;
- (4) The failure of Sodexo to meet quality assurance criteria after a reasonable cure period not to exceed thirty (30) days, or as may otherwise be established by mutual agreement;
- (5) The failure of Sodexo to provide quality food and catering services at the Aquarium at reasonable prices and in a consistently reliable and responsible manner, as described in the Sodexo Response;
- (6) The filing of a voluntary petition in bankruptcy or insolvency, or a petition for reorganization;
- (7) The consent to an involuntary petition in bankruptcy or the failure to vacate within sixty (60) calendar days from the date of entry thereof any order approving an involuntary petition;
- (8) The appointment of a receiver for all or a substantial portion of the property of either party;
- (9) The entry of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, that adjudicates Sodexo or Foundation as bankrupt or insolvent, approves a petition seeking reorganization, or appoints a receiver, trustee or liquidator of all or a substantial part of such party's assets;
- (10) An assignment for the benefit of creditors;
- (11) The failure to pay debts as they become due in the ordinary course, including, without limitation, amounts due to employees and suppliers; and
- (12) The failure of Sodexo to allow, or unreasonable delay in allowing, an audit by the Foundation pursuant to Section X.


(b) *Termination For Convenience; Dispute Resolution.* Either party may terminate this Agreement at any time upon one hundred twenty (120) days' prior written notice of intent to

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terminate given to the other party; provided however, that in recognition of the difficulties that could be caused by the unanticipated interruption of food services at the Aquarium, the parties agree that, upon the request of either party, they shall engage in good-faith discussions in an attempt to resolve the issues giving rise to the notice of intent to terminate. If the parties cannot resolve the issue within twenty-one (21) days after commencing such discussions, they shall then enter into mediation with a qualified mediator agreed upon by the parties. The costs of the mediation shall be equally borne between the parties. If the parties are not able to resolve the issues by the expiration of the one hundred twenty (120) day period, or such extension thereof as the parties may agree to, the Agreement shall be deemed to terminate upon the close of business on the last day of the one hundred twenty (120) day period or extension, whichever is the later.

(c) *Removal of Sodexo Facilities.*

- (1) Within ten (10) days after the expiration or termination of this Agreement, Sodexo shall remove all of its property from the Aquarium premises, including, but not limited to, FF&E, loose equipment, menus, recipes, records and any items of a proprietary nature which are owned by Sodexo. Sodexo shall return to the Foundation all FF&E and loose equipment owned by the Foundation, clean and in as good a condition as when received by Sodexo, reasonable wear and tear excepted, and shall promptly deliver to the Director all keys the Sodexo, and any of its officers, agents, and employees have to the Aquarium or any portion thereof. Sodexo shall leave the areas it has occupied or used in a clean state and in good repair.
- (2) All Sodexo property left on the Aquarium premises shall be considered abandoned and shall be subject to disposal by the Foundation. In performing such removal work, Sodexo shall take due care to not unreasonably injure or damage the Aquarium, and shall make such repairs to the Aquarium as shall be necessary to restore the same to their condition as of the commencement date of this Agreement, ordinary wear and tear and improvements, additions, and alterations, approved by the Foundation excepted. In the event Sodexo fails to remove personal property and the improvements, alterations, and additions specified in the Foundation notice on or by the time specified in such notice, the Foundation may, but shall not be required to, remove such material from the Aquarium and store the same, all at Sodexo's expense; and in the event the Foundation removes or arranges for the storage of such material, the Foundation shall be reimbursed its costs therefor, including any administrative costs, which reimbursement shall constitute a claim upon Sodexo or, at the Foundation's option, may be invoiced to Sodexo.
- (3) In no event shall Sodexo make any claim or demand upon the Foundation nor shall the Foundation be liable for any inconvenience, annoyance,

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disturbance, or loss of business or any other damage suffered by Sodexo arising out of removal operations.

(d) *Repayment of Capital Investment; Advertisement and Promotion Funds.* Except in the event of termination by Sodexo for convenience, the Foundation shall be responsible for the repayment to Sodexo of that portion of the Capital Investment made by Sodexo pursuant to Section IV as remains unamortized as of the date of termination. Any funds remaining in the Advertisement and Promotion Funds shall be retained by the Foundation.

(e) *Accrued Obligations.* The termination or expiration of this Agreement shall not relieve the parties of the obligation to pay any amount due the other that accrued prior to the effective date of such termination or expiration. The Foundation shall repay Sodexo the amount of any unearned Commission advance.

(f) *Employment of Sodexo Hourly Employees.* In the event the Agreement is terminated, the Foundation or any successor foodservice provider selected by Foundation may thereafter employ any Sodexo hourly employee who has been working for Sodexo at the Aquarium.

(g) *Employment of Sodexo Salaried Employees.* The Foundation acknowledges that Sodexo's salaried employees are essential to its core business of providing management services and are familiar with Sodexo's operating procedures and other information proprietary to Sodexo. Therefore, the Foundation agrees that it will not, without Sodexo's prior written consent, solicit for employment, hire, or make any agreement for future employment at the Aquarium with any person who is or has been a salaried employee of Sodexo assigned to the Aquarium within the earlier of one (1) year after such employee terminates employment with Sodexo or within one (1) year after termination of the Agreement. The Foundation also acknowledges that its breach of the obligations set forth in this Section would irreparably harm Sodexo's business; would leave it without an adequate remedy at law, and that Sodexo would be entitled to injunctive relief to enforce the terms of this Section. This provision shall survive termination of the Agreement.

(h) *Transfer Of License And Telephone Numbers.* Upon termination of this Agreement, Sodexo agrees to transfer, at the expense of the Foundation, any and all licenses and permits in accordance with the terms and conditions of this Agreement, and telephone numbers, if applicable, to the successor operator or the Foundation.

(i) *Post-Termination Services.* After termination or expiration of this Agreement for any reason, upon request by the Foundation, Sodexo shall provide the Services, subject to mutually agreeable financial and operational arrangements.

XXVIII. Assignment; Subcontracting/Delegation

(a) *Restrictions on Assignment.* Neither the Foundation nor Sodexo shall assign, transfer or convey this Agreement, nor any part thereof without the prior written consent of the other, except either party may, without prior approval and without being released from any of its responsibilities hereunder, assign the Agreement to any wholly-owned subsidiary.



(b) *Subcontracting/Delegation.* Sodexo shall not delegate or subcontract to a third party any of its rights or duties under this Agreement without the prior written consent of the Foundation. Notwithstanding the foregoing, Sodexo shall be permitted to subcontract the provision of nationally or regionally recognized specialty food products, such as specialty carts, subject to the Foundation's written approval, which shall not be unreasonably withheld, delayed or conditioned. Sodexo shall be fully responsible for the acts and omissions of its subcontractors hereunder in the same manner as if such subcontractors were its employees.

XXIX. Aquarium Security

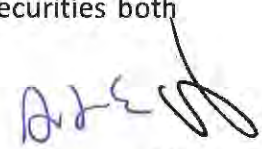
(a) *Generally.* The Foundation shall notify Sodexo in writing of the Aquarium's security requirements, and Sodexo agrees to comply with all security requirements of the Foundation and the Aquarium as they relate to the procedures, practices and employees of Sodexo, to the extent that such requirements do not violate federal, state, or local laws or Sodexo's employment policies. Sodexo shall conduct a criminal background check, including checking prospective employees against publicly-available sex offender data, on all employees prior to their initial employment with Sodexo or prior to assignment to the Aquarium premises. The manner and scope of the background check, as well as Sodexo's internal communications or other use of the results is a matter within its sole discretion. Sodexo shall not assign any person to perform work under this Agreement who has been convicted of a crime that is job related or that would present safety or security risks.

(b) *Drug Testing.* Sodexo agrees to provide drug testing for its permanent employees in accordance with state, federal and local laws and in accordance with the drug testing policy of the City of Virginia Beach to the extent such requirements do not violate federal, state, local laws or Sodexo's personnel policies.

(c) *Sodexo Property.* Sodexo understands and agrees that the security of its property, particularly its consumable goods, is not the responsibility of the Foundation or the Aquarium. Neither the Foundation nor the City of Virginia Beach shall be held liable for the loss of personal effects of Sodexo employees, agents, subcontractors. Notwithstanding the foregoing, the Foundation or Aquarium shall provide the routine security measures normally provided to the premises of the Aquarium for Sodexo and Foodservice Areas, but neither the Foundation nor the City of Virginia Beach shall be held liable for any loss or damage to Sodexo supplies, materials or equipment, except to the extent caused by the willful misconduct of Foundation.

(d) *Identification Badges.* Sodexo shall require its employees to wear identification badges at all times when working on Aquarium premises and shall be solely responsible for the cost of badges, including the cost of replacing badges that have been lost or destroyed.

(e) *Other Security Measures.* Sodexo employees shall be responsible for ensuring that all equipment and lights have been turned off and appropriate doors locked when such areas are closed following normal operating hours. Any other security measures deemed necessary by the Foundation or the Aquarium shall be implemented by Sodexo. In addition, Sodexo shall, at its sole expense, arrange for the secure handling and transportation of cash and other securities both



within and outside the Aquarium. The Foundation shall not be required to provide security for cash and other securities and shall be held liable for any loss to Sodexo, its employees or any third party due to theft or any other cause except to the extent caused by negligent or willful misconduct of the Foundation.

XXX. Closing of Aquarium; Interruption of Service

Foodservice facilities on the Aquarium premises may be closed or temporarily interrupted to accommodate construction, restoration and repair activities, or for any other reason deemed appropriate by the Foundation or the Director. The Foundation shall give Sodexo reasonable advance notice, if possible, of any such closing or interruption. The Foundation shall not be held liable for any loss of revenues including, but not limited to, losses due to such a closing or interruption, but the Foundation shall make a good faith effort to provide a reasonable alternate location for any Sodexo operations that are adversely impacted by construction, restoration, or repair activities. Sodexo shall not be held liable for Guaranteed Commission amounts in the event of such closing and/or interruption of Service materially impacting Gross Receipts, and in such case the parties shall renegotiate the Commission structure set forth in Section IX.

XXXI. Suspension of Services

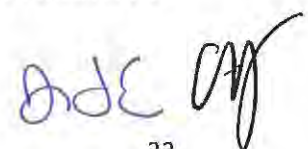
(a) *Generally.* In addition to any suspension of services causes as provided in Section XXV or XXVI, Services may be suspended for a limited period of time as set forth below, without liability of either party to the other, when either party determines that it is impractical to carry on such Services by reason of a labor dispute involving Sodexo, or for other reasons that the parties agree are beyond the control of either party. If any suspension of Services because of a labor dispute continues for more than forty-eight (48) hours, the Foundation shall have the right, without incurring any liability to Sodexo (except as otherwise provided under this Agreement), to take whatever action it may in its sole discretion deem necessary or appropriate in order to resume serving food and beverages, and the Foundation may take such action as it deems necessary or appropriate to operate the Foodservice Areas used by Sodexo and to make them available to patrons and staff of the Aquarium.

(b) *Termination.* In the event any such suspension continues for longer than thirty consecutive (30) days, either party may then, upon written notice to the other, terminate this Agreement. Upon such termination, the provisions of subsections (c) through (i) of Section XVII (Termination and Remedies) shall apply.

(c) *Loss of Revenues.* The Foundation shall not be held liable for any loss of revenues including, but not limited to, losses due to such termination.

XXXII. Health and Safety Inspections

(a) *Generally.* The Foundation may, at any time and its sole discretion, and at its expense, engage a reputable inspection firm that is independent of either party, to perform health and safety inspections of Foodservice Areas. If at any time the conditions at any of the Foodservice



Areas do not, in the reasonable judgment of such inspection firm, meet acceptable standards, the Foundation may require Sodexo to take necessary action to correct the deficiencies, which may include closing one or more facilities. Foundation reserves the right, in consultation with Sodexo, to establish a minimum baseline standard by which Sodexo's performance will be measured during inspections. If Sodexo does not meet the minimum mutually agreed baseline standard, it shall take immediate action to correct any deficiencies within its control. Such independent inspections shall not be more frequent than quarterly during any Contract Year unless the Foundation determines that the health or safety conditions warrant more frequent inspections.

(b) *Notifications; Remedial Measures, etc.* The Foundation and Sodexo shall each immediately notify the other of any fire, accident, or safety hazard that occurs at any portion of the Aquarium under the other's control. Foundation and Sodexo shall each take reasonable measures to remedy any condition in any area of the Aquarium under their respective control that is unsafe, unhealthy, or dangerous. The Foundation may review OSHA-required standards and Sodexo will be responsible for OSHA training of its staff.

XXXIII. Use of Aquarium Name and Logo

(a) *Generally.* Except as may be otherwise provided in this Agreement, Sodexo shall not refer to the Virginia Aquarium & Marine Science Center or its facilities in any manner or through any medium, whether written, oral, or visual, for any purpose whatsoever, including, but not limited to, advertising, promotion, publicity, solicitation or fund-raising without the prior written permission of the Foundation. To that end, Sodexo may submit to the Foundation a one-time request to include Virginia Aquarium name and logo in its promotional material with accurate representations of the methods it proposes to use. If such a request is approved in writing by the Foundation, Sodexo shall not be required to submit a written request in each instance in which it uses the name and logo in the same manner thereafter, but only when such use is a new use not previously reviewed or approved by the Foundation.

(b) *Post-termination Use.* In no event shall Sodexo use, publicize, or distribute any such material after the termination or expiration of this Agreement. Any such permission granted by the Foundation may be rescinded by it, at its sole discretion and for any reason, and shall not thereafter be effective to allow the use of the Aquarium's name or logo by Sodexo.

XXXIV. Notices

All notices pursuant to this Agreement shall be in writing and either personally delivered, sent by any reputable overnight delivery service, or by registered or certified mail, return receipt requested as follows:

To the Foundation:

Executive Director
Virginia Aquarium & Marine Science Center Foundation, Inc.
717 General Booth Boulevard, Suite 10
Virginia Beach, Virginia 23451



To Sodexo:

Sodexo Operations, LLC
Attention: Charlotte Jensen
Chief Executive Officer, Sport & Leisure NORAM
3020 Woodcreek Drive; Suite B
Downers Grove, Illinois 60515

With a copy to:

Sodexo Operations, LLC
Attention: Law Department
9801 Washingtonian Boulevard, Dept. 51/899.74
Gaithersburg, Maryland 20878

XXXV. Governing Law; Venue

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia. Any litigation instituted to enforce the provisions of this Agreement, or arising hereunder, shall be filed in a court having subject matter jurisdiction within the City of Virginia Beach, Virginia or in the United States District Court for the Eastern District of Virginia.

XXXVI. No Waiver

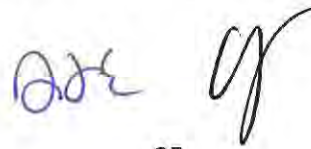
The failure of any party at any time to require performance of any provision or to resort to any remedy provided under this Agreement shall in no way affect the right of such party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any party of a breach be deemed to be a waiver of any subsequent breach. No course of dealing, or any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

XXXVII. Entire Agreement; Modification

This Agreement constitutes the entire Agreement of the parties and supersedes all prior or contemporaneous agreements, whether oral or written, between the parties.

XXXVIII. Interpretation

Each party agrees to the use of the particular language of the provisions of this Agreement, and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman, but rather in accordance with the fair meaning thereof, having due regard



to the benefits and rights intended to be conferred upon the parties and the limitations and restrictions upon such rights and benefits intended to be provided.

XXXIX. Severability

If any part of this Agreement is, for any reason, held invalid for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Agreement, provided that the substantial economic benefits of this Agreement and the intent of the parties are not frustrated thereby.

XL. Trade Secrets and Proprietary Information

(a) *Use by Foundation.* During the term of the Agreement, Sodexo may grant to the Foundation a nonexclusive right to obtain access to certain of its proprietary materials, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed to Sodexo) and similar compilations regularly used in Sodexo's business operations ("Trade Secrets"). The Foundation shall not disclose any of Sodexo's Trade Secrets or other confidential information, directly or indirectly, during or after the term of the Agreement, unless compelled to do so by controlling law. The Foundation shall not photocopy or otherwise duplicate any such material without the prior written consent of Sodexo. All Trade Secrets and other confidential information shall remain the exclusive property of Sodexo and shall be returned to Sodexo promptly upon termination of the Agreement.

(b) *Software Use/Ownership.* Without limiting the foregoing, the Foundation specifically agrees that all software associated with the operation of the food services, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to Sodexo and not the Foundation. Furthermore, the Foundation's access or use of such software shall not create any right, title interest, or copyright in such software, and the Foundation shall not retain such software beyond the termination of the Agreement. Any signage or other service mark or trademark proprietary to Sodexo shall remain the exclusive property of Sodexo and shall be returned to Sodexo promptly upon termination of this Agreement. In the event of any breach of this provision, Sodexo shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive termination of the Agreement.

XLI. Captions

The captions or catchlines in this Agreement are for convenience only and shall not be construed to define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.



XLII. Further Acts

Each party agrees to perform any further acts and to execute, acknowledge and deliver any documents, and to provide any information, which may be reasonably necessary to carry out the provisions of this Agreement.

XLIII. Good Faith.

Both parties shall cooperate in the implementation of the provisions of this Agreement in a spirit of good faith and fair dealing and, to that end, any consent or approval required hereunder shall be given or withheld or conditioned on a reasonable and timely basis.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date written below.

Sodexo Operations, LLC

Virginia Aquarium & Marine
Science Center Foundation, Inc.

By: [Signature]
Title: Chief Executive Officer
Date: 9/26/17

By: [Signature]
Title: Deputy Director
Date: 9/19/17

APPROVED AS TO LEGAL SUFFICIENCY:

APPROVED AS TO CONTENT:

[Signature]
Foundation Counsel

[Signature]
Aquarium Foundation

EXHIBIT A
FOUNDATION-OWNED FF&E AND LOOSE EQUIPMENT
(as of the commencement of the Contract Services Term)

Exhaust Hood
Ventilator
Cabinet Sink
3 Compartment Sink
Mop Sink
Walk-In Cooler Box
Air Curtain
Ventilator
Walk-In Freezer Box



EXHIBIT B

SODEXO-OWNED FF&E AND LOOSE EQUIPMENT

(which will be brought to the Aquarium at Sodexo's expense at or prior to the Effective Date)



EXHIBIT C

**EQUIPMENT PROVIDED BY SODEXO VENDORS UNDER A LOAN OR LEASE AGREEMENT
AS OF THE EFFECTIVE DATE**



**EXHIBIT D
EXISTING EQUIPMENT**

(That equipment currently owned by the Foundation which shall be purchased pursuant to Section IV hereof.)

Osprey Café Front Line Equipment

Bun Toaster
Pizza Prep Table
Dedicated Holding Bin
Breath Guard Brackets
Ice Pan
Self-Service Refrigerated Drop-In Counter Merchandiser
Built-In Heated Shelf (Small Heat Shelf)
Built-In Heated Shelves (Set of 2 Heated Shelves)
Fry Holding Station
Self-Contained Compact Mega Top Refrigerators (Prep Refrigerator)
Roll-In Freezer Models for 72" High Racks/Self Contained
Two Deck Impinger Oven (Digital Advantage Series Single Belt Conveyorized Electric Oven)
Oven Exhaust Hood (Ventless Hood)
Three Well Steam Table (Sealed Well Hot Food Tables)
Breath Guards
Deli Case
Rolling Rack for Refrigerator
Hand Sink
Beverage Counter
Cashier Counter
Storage Shelving
Countertop
Roll - Thru Refrigerator
Deli Cooler

Osprey Café Kitchen Equipment

Fryer
Fryer
Fryer
Range/Oven
Grill/Convection Oven
Blender
Convection Oven
Gas Hose with Swivel
Slicer Stand
Ice Machine
Undercounter Dishwasher
Water Filter Assembly



EXHIBIT D (CONTINUED)
EXISTING EQUIPMENT

(That equipment currently owned by the Foundation which shall be purchased pursuant to Section IV hereof.)

Walk-In Cooler Refrigeration System

Walk-In Freezer Compressor Refrigeration System

Sandwich Unit

Freezer Base Cabinet

6 Ft. Wall Shelf

Shelf

Refrigerated Work Counter

8" Wall Shelf

Mobile Rack - Blue Rack

Dry Storage System (Rolling Racks)

Syrup Rack

Wall Mount Carbonator

Slicer

Roll - Thru Heated Cabinet

Bowls, platters, pots, pans, tureens, baskets, cups, tongs, trays, spoons, cutting board, etc.

thermometers, strainer, pizza cutter, peelers, pastry brush, timer, labels, scales, funnel, corckscrews

counter toppers, poles, lens, shelf, freight, panels

Dunnage racks

Osprey Café Seating

Two Top Tables - Quantity (5) - Seats available (10)

Four Top Table - Quantity (7) - Seats available (28)

Six Top Table - Quantity (6) - Seats available (36)

Stand Alone Tables - Quantity (7) - Seats available (28)

Chairs - Quantity (18)

Trash Bins - Quantity (3)

Highchairs - Quantity (

Theater Snack Stand Seating

Tables - Quantity (2)

Chairs - Quantity (8)

Catering Equipment

Crescor Heated Cabinet

Crescor Heated Cabinet

Toaster oven/oven

Dishwasher

Ice maker/bin

Refrigerator

EXHIBIT D (CONTINUED)
EXISTING EQUIPMENT

(That equipment currently owned by the Foundation which shall be purchased pursuant to Section IV hereof.)

10 cocktail tables
100 resin chairs and swivel cart
100 White resin folding chairs and folding chair rack dolly
2 tables for catering
6 folding tables for catering
2 display ladders
3 table skirts, 3 stands
6 table forms
9 table forms
low display table
high display table for catering
folding chair dolly
display case
ladder
Tray Stand
spoons, tongs, baskets, holders, knives, bowls, platters, pans, plates, china, forks, cups, goblets
vases, corkscrew, condiments, lamps, racks, chafers, decorative décor, pitchers, gloves, buckets



EXHIBIT B



Sports & Leisure

Douglas Conner
Senior Vice President

VIA Electronic Mail and UPS Delivery

May 1, 2020

Ms. Cynthia W. Spanoulis
Executive Director
Virginia Aquarium & Marine Science Center Foundation, Inc.
717 General Booth Boulevard, Suite 10
Virginia Beach, Virginia 23451

Re: Notice of Termination for Suspension of Services of Food Service Agreement, dated July 1, 2017 (the "Agreement") between the Virginia Aquarium & Marine Science Center Foundation, Inc. ("Foundation") and Sodexo Operations, LLC ("Sodexo")

Dear Ms. Spanoulis:

I hope this letter finds you and the whole Foundation team healthy and well in this unprecedented time of global crisis due to the current novel coronavirus (COVID-19) pandemic.

As you are aware, a decision was made to close the Aquarium to the public beginning on March 16, 2020 and it has remained closed ever since. The decision to suspend services at the Aquarium was an appropriate step as it was impractical to carry on services while the coronavirus continued to spread in our community beyond the control of either Sodexo or the Foundation. Further, following the issuance of **Executive Order Number Fifty-Three (2020)** concerning *Temporary Restrictions on Restaurants, Recreational Entertainment, Gatherings, Non-essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19)* and **Executive Order Number Fifty-Five (2020)** concerning *Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19)* by the Governor of the Commonwealth of Virginia effective on or about March 24, 2020 and March 30, 2020, respectively, Sodexo's performance under the Agreement has been prevented by act of law and/or public authority.

As such, Sodexo hereby exercises its right pursuant to Section XXXI *Suspension of Services* on its own, and in accordance with Section XXVI *Force Majeure*, to terminate the Agreement, as services have been suspended and Sodexo's performance under the Agreement has been prevented for longer than thirty (30) consecutive days.

This decision was not made lightly but we have determined that it was necessary for Sodexo under the circumstances. We understand that the timing of this termination is not ideal for the Foundation, but please be assured that Sodexo is willing to take the steps necessary to assist the Foundation in its search for and transition to a new service provider.





I will be in touch with you shortly to discuss the next steps in the transition and to wind down Sodexo's operation at your facility; if appropriate we can also discuss any other potential solution to these matters, including working with the Foundation to help the Foundation fulfill its obligations to Sodexo under the Agreement. If you have any immediate questions or concerns, please do not hesitate to reach out to me directly.

Sincerely,



Douglas Conner

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Sodexo Operations, LLC
(b) County of Residence of First Listed Plaintiff Montgomery, Maryland
(c) Attorneys (Firm Name, Address, and Telephone Number)
Hunton Andrews Kurth LLP
500 East Main Street, Suite 1301, Norfolk, VA 23510
(757) 640-5300

DEFENDANTS
Virginia Aquarium & Marine Science Center Foundation
County of Residence of First Listed Defendant Virginia Beach
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332
Brief description of cause:
Defendant breached agreement between the parties, in bad faith and causing damage to Plaintiff.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 292,250.15 + pre/post-judgment interest
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE 06/19/2020
SIGNATURE OF ATTORNEY OF RECORD /s/ Wendy C. McGraw (VSB #37880)

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.