

## General Terms and Conditions for the Purchase and Supply of Goods and Services (Sodexo 2018)

### Recitals

(A) Sodexo Motivation Solutions U.K Limited, a company registered in England with Company Number 02680629 of registered office, One Southampton Row, London, WC1B 5HA and trading address is at Avalon House, Breckland, Linford Wood, Milton Keynes MK14 6LD ("Sodexo") and its group companies provide benefit reward Goods and Services within a broad range of market sectors.

(B) For internal purposes Sodexo has established a central purchasing division known as central purchasing ("Sodexo Central Purchasing") and operates Units (as defined below) as individual cost centres.

(C) The Supplier (as set out in the accompanying letter) has been selected by Sodexo and in consideration of the fees set out in the Schedule (the "Fees") the Supplier has agreed to supply the services, products and any deliverables described in the Schedule or Order (the "Goods and Services") under these Terms and Conditions.

### 1 Definitions and Interpretation

1.1 In this agreement the following terms shall have the following meanings:

**Agreement** means these Terms and Conditions incorporating the Schedule annexed hereto.

**Authorised Unit** means a Unit authorised to order the Goods and Services from the Supplier as notified to the Supplier in a Supplier Authorisation Letter.

**Business Day** means a day (other than a Saturday or Sunday) when banks generally are open for the transaction of normal banking business in London.

**Change of Control** means where a person who has Control of any body corporate ceases to do so or if another person acquires Control of it.

**Commencement Date** means as set out on the Schedule or in Order

**Confidential Information** means all and any commercial, financial, marketing, technical or other information, know-how or trade secrets in any form or medium belonging to or disclosed by one of the parties to this Agreement or obtained under or in connection with this Agreement (whether disclosed or obtained before or after the date of this Agreement), together with any copies, summaries of, or

extracts from, such information in any form or medium or any part(s) of this information and which is designated as confidential or which is manifestly confidential.

**Control** means the ability to direct the affairs of another whether by the ownership of twenty five percent (25%) of the voting rights exercisable at general meetings, by an ability to direct or have a casting vote in respect of the affairs of the board, contract, or otherwise.

**Customer** means an entity which either directly or indirectly utilises the Goods and Services provided by the Supplier under this Agreement.

**Data Protection Legislation** means (for the period ending 24 May 2018) the Data Protection Act 1998 and thereafter shall mean the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

**Defaulting Party** has the meaning set out in Clause 16.1.

**Deliverables** means those deliverables as set out in the Schedule and all other items, documents or other material agreed to be supplied by the Supplier as part of the Goods and Services.

**Equipment** means the equipment provided by the Supplier as part of the Goods and Services as set out in the Schedule or as Ordered by Sodexo Central Purchasing or a Unit.

**Equipment Delivery Date** means the date for delivery of the Equipment as set out in the Schedule or Ordered by Sodexo Central Purchasing or a Unit from time to time.

**Financial Year** means 1 September to 31 August of any year during the Term of this Agreement.

**Force Majeure Event** means all events beyond the control of the affected party which cannot be reasonably foreseen or, if foreseeable, cannot be avoided. A Force Majeure Event shall include (without limitation) war, hostilities, invasion, riot, civil commotion, pandemic, government control, fire, flood, storm or other natural catastrophe. A Force Majeure Event shall not include any fault or delay by the Supplier's employees or sub-contractors.

**Good Industry Practice** means at any time, the exercise of that degree of skill, diligence,

prudence and foresight which would reasonably and ordinarily be expected at such a time from a skilled and experienced provider of services similar to the Goods and Services seeking in good faith to comply with its contractual obligations and complying with all relevant laws rules and regulations.

**Initial Period** means the initial period set out in the Schedule.

**Intellectual Property Rights** means any patents, trademarks, designs, copyright, database rights, know-how and any other similar rights or obligations throughout the world (in each case whether or not registered or registerable) for the full duration of such rights (including extensions and renewals).

**Insolvency Event** occurs when:

(a) a party becomes unable to pay its debts as they fall due;

(b) in relation to a party a statutory demand is served, a receiver is appointed or any insolvency procedure under the Insolvency Act 1986 is instituted or occurs or notice of intention to institute such a procedure is given;

(c) any order is made for or there occur proceedings constituting main proceedings in any member state of the European Union; or

(d) any analogous demand, appointment or procedure is instituted or occurs in relation to a party elsewhere than in England and Wales.

**Key Personnel** means those personnel named as such in the Schedule or in Order.

**Non-Defaulting Party** has the meaning set out in Clause 16.1.

**Notice Period** means one (1) month unless specified otherwise in the Schedule or in Order.

**Order** means an order for supply of the Goods and Services (or any part thereof) from Sodexo Central Purchasing or a Unit to the Supplier. The word Ordered shall be construed accordingly.

**Paying Party** has the meaning set out in Clause 8.6.

**Purchasing Liaison** means the authorised representative of Sodexo as named in the Schedule or in Order.

**Quality Standards** means any quality standards used to measure the performance of the Goods and Services or supply of Goods as specified in the Schedule.

**Rebates** means those rebates or other discounts payable by the Supplier to Sodexo as set out in the Schedule;

**Replacement Supplier** means a replacement provider for the Supplier nominated by Sodexo for the provision of the Goods and Services or any part of the Goods and Services.

**Supplier Number** means the unique number allocated to the Supplier as set out in the Schedule.

**Specification** means specifications including technical details and descriptions as to any Goods and Services as notified to the Supplier by Sodexo Central Purchasing or the relevant Unit.

**Sodexo Customer Agreement** means an agreement pursuant to which Sodexo or the Units supplies services to a Customer.

**Supplier's Account Manager** means the authorised representative of the Supplier as set out in the Schedule.

**Supplier Authorisation Letter** means, where applicable, the document supplied by Sodexo Central Purchasing to the Supplier specifying the Units authorised to Order the Goods and Services from the Supplier.

**Term** means the Initial Period as set out in Clause 3 and any period following the Initial Period during which this Agreement continues in effect unless Sodexo places a one-off purchase order.

**Unauthorised Goods and Services** means services not specified in the Schedule or not otherwise authorised in writing by Sodexo Central Purchasing or in Order that can be supplied to a particular Unit under this Agreement.

**Unit** means the individual business unit of Sodexo that provides services to Customers and such other business units as notified to the Supplier by Sodexo Central Purchasing or the relevant Unit in writing. For avoidance of doubt, Sodexo or Unit is entitled to place an Order without the Supplier Authorisation Letter and the Supplier is obliged to accept the Order.

**Unit Purchase Order** (if applicable) means the prescribed form for Units to Order Goods and Services as set out in the Schedule or in Units Purchaser Order.

1.2 Any reference in this Agreement to any provisions of a statute shall be construed as a reference to these provisions as amended, re-enacted or extended at the relevant time and

shall also include subordinate and enabling legislation relating to relevant statutes.

1.3 Headings are for ease of reference only and do not affect the interpretation or construction of these conditions.

1.4 References to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.

1.5 References to the word "include" or "including" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things.

1.6 Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part.

1.7 In the event of any inconsistency between this Agreement and any Order this Agreement shall prevail.

## 2 Incorporation of Conditions and Orders

2.1 This Agreement shall:

- (a) prevail over and take the place of any other terms or conditions stipulated, incorporated, referred to or contained in any document or communication from the Supplier in the course of negotiations; and
- (b) apply to the exclusion of any other terms or conditions on which any quotation has been given to Sodexo Central Purchasing or any Unit and any similar provision in the Supplier's terms and conditions shall be of no effect.

2.2 Save for any representations made by the Supplier in writing to Sodexo as to the performance of the Goods and Services in documents referred to in the Schedule or Purchase Order, no other agreement, representation or promise of any kind shall form part of, alter, vary, supersede or operate as a waiver of any or all of these conditions unless expressly made or accepted by a duly authorised representative of Sodexo in writing as provided in Clause 28.

## 3 Duration

3.1 This Agreement shall come into force on the Commencement Date and shall continue for the Initial Period unless the Agreement is terminated earlier in accordance with Clause 16.

3.2 After the expiry of the Initial Period, this Agreement shall continue in effect:

- (a) for any additional term as agreed in writing between the parties; or
- (b) until it is terminated in accordance with Clause 16 or by either party in accordance with the Notice Period.

## 4 The Goods and Services

4.1 The Supplier shall supply the Goods and Services (and shall procure that its employees, agents and any permitted sub-contractors perform and supply the Goods and Services) throughout the Term of this Agreement as Ordered:

- (a) in accordance with the Quality Standards and more generally in accordance with this Agreement;
- (b) using reasonable skill and care;
- (c) in accordance with Good Industry Practice.

4.2 The Supplier shall not do, permit or procure anything which does or may damage or harm Sodexo's reputation or that of any Customer or which does or may bring Sodexo or any Customer into disrepute.

4.3 The Supplier shall comply with all reasonable instructions of Sodexo and the relevant Unit.

4.4 The Supplier shall provide Sodexo and/or the relevant Unit with such information as Sodexo and/or the relevant Unit (including their authorised agents or representatives) may reasonably require, in order to verify that the Supplier is complying with its obligations under Clause 4.1 to 4.3;

4.5 The Supplier shall:

- (a) provide at its expense (without remuneration or reimbursement of any kind) all equipment, materials and supplies required in performing the Goods and Services (unless otherwise agreed by Sodexo in writing);
- (b) ensure that any and all systems used by the Supplier to provide or support the Goods and Services are adequately maintained and licensed, and ensure that adequate support agreements are in place for those systems; and
- (c) maintain (in accordance with Good Industry Practice) appropriate business

continuity and disaster recovery processes and procedures.

4.6 If the provision of Goods and Services includes the provision of Equipment, the Supplier will deliver the Equipment in good working order and condition on the Equipment Delivery Date (or such other agreed date). The Supplier shall ensure that at all times during the Term, the Equipment:

- (a) is of satisfactory quality and be fit for its purpose;
- (b) is operated, stored and maintained in accordance with Good Industry Practice; and
- (c) complies with all applicable laws, rules and regulations.

4.7 The Equipment shall at all times remain the property of the Supplier, unless otherwise agreed in writing with Sodexo. The Equipment shall be provided at the Supplier's sole risk. Sodexo shall not be liable for any loss or damage to the Equipment for any reason whatsoever.

4.8 If the provision of Goods and Services includes providing any employees of the Supplier, the Supplier shall ensure that such employees, at all times during the Term:

- (a) are suitably experienced and qualified to perform the duties required of them in connection with the Goods and Services;
- (b) will use all necessary safety equipment and personal protection equipment appropriate for the performance of the Goods and Services; and
- (c) comply with all and any conditions and procedures in force from time to time as Sodexo or the relevant Unit may notify to the Supplier.

4.9 The Goods and Services (and any milestones specified in the Schedule or any Order) shall be performed in full by any dates so specified. Time of delivery of the Goods and Services shall be of the essence.

4.10 Sodexo's rights under these terms and conditions are in addition to the statutory conditions implied in favour of Sodexo under the Sale of Goods Act 1979.

4.11

## **5 Order Process**

5.1 Sodexo shall provide the Supplier with details of each Authorised Unit in a Supplier Authorisation Letter if applicable.

5.2 Sodexo Central Purchasing shall not be liable to pay:

(a) for any Goods and Services Ordered by and/or supplied to Sodexo that is not by an authorised person; or

(b) for any Unauthorised Goods and Services supplied to a Unit; or

5.3 There is no obligation on Sodexo, Sodexo Central Purchasing or the Units to purchase Goods and Services exclusively from the Supplier or to place any or a minimum amount of business with the Supplier.

5.4 If the Goods and Services are to be delivered by instalments, increments or in phases, this Agreement will (unless otherwise agreed in writing) be treated as a single Agreement and not severable.

5.5 The Purchasing Liaison (or such other person as notified to the Supplier) shall be the first point of contact in relation to matters arising in relation to this Agreement (except in such circumstances where notice is required to be provided to Sodexo under this Agreement, or there is a dispute in relation to an invoice in which case the provisions of the relevant Clause shall apply).

## **6 Sub-Contracting**

Sodexo acknowledges that the Supplier may wish to sub-contract aspects of the performance of the Goods and Services to third parties. The Supplier shall not be entitled to sub-contract the performance of all or any part of the Goods and Services without the prior written consent of Sodexo, such consent to be given or withheld at the sole discretion of Sodexo. For the avoidance of doubt, the Supplier's appointment of a sub-contractor shall not relieve the Supplier from any of the Supplier's obligations under this Agreement and the Supplier shall be responsible for the acts and omissions of any sub-contractor howsoever arising.

## **7 Deliverables**

7.1 The Supplier shall procure delivery of any Deliverables as specified in the relevant Purchase Order.

7.2 The Supplier assigns to Sodexo (and shall procure the same from any sub-contractors), with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Goods and Services (including the Deliverables).

7.3 The Supplier shall promptly, at Sodexo's request do (or procure to be done) all such further acts and things and execution of

all such other documents as Sodexo may from time to time require for the purposes of securing for Sodexo and/or the relevant Unit the full benefit of the Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to Sodexo in accordance with Clause 7.2.

## **8 Fees, Rebates, Terms of Payment And Invoicing**

8.1 The Fees payable (unless otherwise stated in the Schedule) are:

- (a) exclusive of any applicable VAT (or other equivalent sales tax) which shall be payable by Sodexo subject to receipt of a VAT invoice; and
- (b) inclusive of all charges for the Goods and Services and any applicable duties, imposts, taxes or levies other than VAT.

8.2 The Supplier shall submit individual invoices to the Units, on the last Business Day of each calendar month for the Goods and Services provided by the Supplier in the preceding calendar month.

8.3 All invoices must contain the details required by Sodexo from time to time or required to be set forth in tax invoices by the applicable tax authorities and in particular the following (as relevant):

- (a) the Supplier's name, Supplier number, address and VAT (or equivalent) registration number;
- (b) a description sufficient to identify and quantify the Goods and Services performed;
- (c) total amount payable (excluding VAT (or equivalent));
- (d) amount of VAT (or equivalent) charged.

8.4 Unless otherwise agreed by Sodexo and the Supplier or if there is a dispute relating to the amount of the invoice, Sodexo shall pay any such invoice within sixty (60) days following the month in which the invoice was received by Unit.

8.5 The Supplier shall pay any Rebates due to Sodexo in accordance with the Schedule and within thirty (30) days of date of invoice from Sodexo.

8.6 Full and final reconciliation of all Rebates and other discounts due to Sodexo from the Supplier shall be undertaken by Sodexo Central Purchasing following the end of each Financial Year. On receipt of a year-end letter from Sodexo Central Purchasing, requesting the turnover figures for the preceding Financial Year, the Supplier must complete and return the requested information

within three (3) weeks from the date thereon. If there are any differences between Sodexo's records and the figures provided by the Supplier and the parties fail to agree figures within two (2) weeks of Sodexo's receipt of the information from the Supplier, the dispute resolution procedure in Clause 32 of these Terms and Conditions shall apply.

8.7 When final annual turnover has been agreed pursuant to Clause 8.6, any payments due to be paid to Sodexo by the Supplier shall be due and payable thirty (30) days after the date of a letter setting out the agreed annual turnover, sent from Sodexo Central Purchasing to the Supplier ("Supplier Reconciliation Letter").

8.8 Sodexo may in its absolute discretion deduct any Rebates and Other payments due from the Supplier and set off the same against any payments due from Sodexo to the Supplier

8.9 If any overpayment has been made by the Supplier to Sodexo then Sodexo Central Purchasing shall use reasonable efforts to refund the relevant amount to the Supplier sixty (60) days after the date of the Supplier Reconciliation Letter.

8.10 If any party ("Paying Party") fails to pay to the other party any sum payable by it on the due date for payment under this Agreement the Paying Party shall pay interest on the overdue sum for the period from and including the due date of payment up to the date of actual payment of the full amount (after as well as before judgment) at a rate of one per cent (1%) above the UK base rate from time to time of Barclays Bank plc.

8.11 Without prejudice to any other rights of Sodexo, any debts, damages, costs, charges, expenses, sums or other liquidated amounts which are recoverable by Sodexo from the Supplier under this Agreement may be deducted by Sodexo from any charges then due and payable under this Agreement.

8.12 The Supplier will ensure that its payment and invoicing systems are compatible with Sodexo's processing system. If the Supplier does not currently have the ability to use Sodexo's systems or equivalent, it shall take all necessary steps to ensure that it acquires such capability. Sodexo will provide such assistance as may be needed in this regard.

8.13 The Supplier agrees that adjustments can be made in respect of retrospective

Discounts and Rebates and Other Payments without any adjustment being made to the original VAT charge. However, Discounts being applied immediately the invoice and deducted from a remittance will result in a reduction to the VAT charged. The Supplier agrees to make such adjustments by agreeing to supply under these Terms and Conditions.

## **9 Benchmarking**

9.1 Pursuant to this Agreement, Sodexo reserves the right to carry out a benchmarking exercise from time to time to determine if the Fees being paid by Sodexo for the Goods and Services are competitive. The Parties agree that where a benchmarking exercise reveals that Sodexo may be able to buy the Goods and Services at better prices than those offered by the Supplier, then the parties will renegotiate the prices.

## **10 Records and Audit Access**

10.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry of this Agreement (or as long a period as may be agreed between the parties in writing), full and accurate records and accounts of the operation of this Agreement including the Goods and Services provided under it, this Agreement and the amounts invoiced and paid for under this Agreement.

10.2 The Supplier shall afford Sodexo and Sodexo's representatives ("Auditors") such access to such records and accounts as may be required by Sodexo from time to time.

10.3 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six (6) years after expiry of the Term to Sodexo and its internal and external auditors

10.4 Sodexo shall use reasonable endeavours to ensure that the conduct of such audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and Services.

10.5 The Supplier shall on demand, provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the Auditors within the scope of the audit;
- (b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Goods and Services; and
- (c) access to the Supplier's staff.

10.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless any such audit reveals:

- (a) an overpayment by Sodexo of more than five percent (5%) in respect of the Goods and Services, the cost of such inspection shall be borne by the Supplier, who shall make good the shortfall within five (5) Business Days and pay interest of one per cent (1%) above the base rate from time to time of Barclays Bank plc; or
- (b) a material breach of this Agreement, in which case the Supplier shall reimburse Sodexo for Sodexo's reasonable costs incurred in relation to the audit.

## **11 Co-Operation**

The Supplier shall:

- (a) keep Sodexo and the relevant Unit informed regularly of, and promptly respond to, any of their requests relating to the Goods and Services and of all other material facts relating to the Goods and Services;
- (b) work and co-operate with Sodexo and the relevant Unit's personnel and with any other personnel notified to it by Sodexo and/or the relevant Unit; and
- (c) attend meetings with a person (or persons) nominated by Sodexo from time to time as reasonably requested by Sodexo to discuss the provision of Goods and Services.

## **12 Warranties and Indemnities of Supplier**

12.1 The Supplier warrants, represents and undertakes to Sodexo, Sodexo Central Purchasing and the relevant Unit that it has full power to enter into this Agreement and to give the warranties and indemnities in this Agreement.

12.2 The Supplier warrants, represents and undertakes to Sodexo, Sodexo Central Purchasing and the relevant Unit that it shall (and shall procure that its sub-contractors and their agents and employees shall also):

- (a) provide the Goods and Services in accordance with any specification and with the highest level of professional skill, care and diligence and in a good and workmanlike manner in accordance with Good Industry Practice and at all times in accordance with this Agreement including any Quality Standards;
- (b) ensure that the Goods and Services comply in all respects with all applicable laws, statutes, regulations and codes of practice relating to the provision of the Goods and

Services which may be in force at the time when the Goods and Services are performed;

(c) comply with Sodexo's and each Unit's safety and security standards and site procedures and any lawful instructions and guidelines issued by Sodexo and/or any Unit from time to time;

(d) provide the Goods and Services efficiently with optimum use of all resources so as to provide the Goods and Services at the lowest reasonably obtainable overall cost;

(e) ensure the provision of the Goods and Services and use of any items developed or delivered by or on behalf of the Supplier under this Agreement (including any Deliverables) shall not infringe any Intellectual Property Rights or other rights of any third party;

(f) ensure that all necessary consents, permits, licences and authorisations are held to enable performance of the Goods and Services and the Supplier's obligations under this Agreement (and shall promptly provide to Sodexo or the relevant Unit copies on request);

(g) immediately inform Sodexo of any changes in the Supplier's method of doing business which might affect performance of the Supplier's obligations under this Agreement; and

(h) ensure that all Deliverables will:

(i) be of satisfactory quality and fit for any purpose for which they are supplied or held out by the Supplier or made known to the Supplier in writing at or before the time this Agreement was entered into;

(ii) be free in all material respects from defects in design, material and workmanship and delivered in accordance with any agreed timetables; and

(iii) correspond in all material respects with any relevant Specification

12.3 The Supplier shall indemnify (and keep indemnified) Sodexo, Sodexo Central Purchasing and each Unit in full against all losses, damages (including, but not limited to, loss or damage to property or Sodexo's business), liability, claims, costs, fines, penalties and expenses (including reasonable legal expenses whether or not proceedings are brought) awarded against or incurred or paid by Sodexo, Sodexo Central Purchasing or a Unit as a result of or in connection with:

(a) breach of any warranty given by the Supplier whether actual or alleged with

reasonable cause and whether or not proceedings are brought;

(b) any claim made that the performance of the Goods and Services or receipt thereof by Sodexo or a Unit (including receipt of any Deliverable) infringes the Intellectual Property Rights or any contractual rights of any other person;

(c) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying or delivery of the Goods and Services (including any Deliverables); and

(d) any claim made by any Customers in respect of the Goods and Services (including any Deliverables) supplied by the Supplier (except to the extent that such liability results from negligence on the part of Sodexo and the Units or their employees).

12.4 The rights of Sodexo (including Sodexo Central Purchasing and the Units) under this Agreement are additional to their rights at common law and under statute.

12.5 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance to be taken out in respect of all liabilities, claims, costs and expenses which may occur to Sodexo (including Sodexo Central Purchasing and the Units), and their employees, pursuant to this Agreement. For the avoidance of doubt this shall include a minimum liability cover of £5 million for third party claims, and £10 million public and employer's liability cover. The Supplier must provide evidence from its insurers of such cover within ten (10) days of receiving a request from Sodexo, and on the Commencement Date and each anniversary thereafter.

12.6 The Supplier shall be liable for, and shall indemnify (and keep indemnified) Sodexo (including Sodexo Central Purchasing and the Units), its Customers and other contractors against, any expense, liability, loss, claim or proceedings whatsoever arising under any statute or regulation (including, by way of example, the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time) or at common law, whether during or after the expiry or termination of all or any part of the Goods and Services, incurred by Sodexo (including Sodexo Central Purchasing and the Units), its Customers and any other contractors as a result of the employment or termination of

employment of any employee of the Supplier or any of its contractors, or any other person that claims to be an employee or contractor of the Supplier, howsoever arising, employed or otherwise engaged (whether wholly or otherwise) in the supply of the Goods and Services from time to time.

12.7 In addition to Clause 4.6, any materials and supplies and personal property of the Supplier (including its sub-contractors and their employees, agents and subcontractors) used, held or stored on the premises of Sodexo or any Unit shall be at the Supplier's sole risk and Sodexo (including Sodexo Central Purchasing and the Units) shall not be liable for any loss or damage to such items for any reason whatsoever.

### **13 Rights of Step-In**

13.1 If Sodexo reasonably believes that it needs to take action in connection with the Goods and Services because:

(a) an act or omission of the Supplier:

(i) creates a material interruption or delay in the provision of the Goods and Services; or

(ii) is prejudicial to Sodexo's ability to provide its Goods and Services or functions to a material degree;

(b) any Force Majeure Event creates a material interruption or delay in the provision of the Goods and Services;

(c) any circumstances arise entitling Sodexo to terminate all or any part of the Agreement; or

(d) the Supplier breaches any of its obligations or warranties under Clause 22 (Slavery and Human Trafficking),

then Sodexo shall be entitled itself or via a Replacement Supplier to take over the provision of the affected Goods and Services which may include the whole Goods and Services.

13.2 The Supplier shall co-operate with and provide all reasonable assistance to Sodexo and/or any such Replacement Supplier and/or third party to enable the resumption of the Goods and Services to a level which meets the Quality Standards and/or is in accordance with the terms of this Agreement. Such assistance shall include;

(a) allowing Sodexo or the Replacement Supplier and/or its nominated third party reasonable control over the management of the Supplier's staff providing the Goods and Services;

(b) subject to Sodexo or the Replacement Supplier and/or its nominated third party agreeing to abide by the Supplier's relevant policies, allowing Sodexo or the Replacement Supplier and/or its nominated third party reasonable access to the premises and equipment from where, or with which, the Goods and Services are provided, in each case as is needed to provide the Goods and Services; and

(c) allowing Sodexo or the Replacement Supplier and/or its nominated third party reasonable access to such management records, software and systems which relate to the Goods and Services as is reasonably necessary to enable the performance of the Goods and Services.

13.3 If Sodexo exercises its right under this Clause Sodexo shall pay for all Goods and Services that it continues to receive from the Supplier but shall not be obliged to pay the Fees to the Supplier insofar as Sodexo or the Replacement Supplier is providing the Goods and Services to which those Fees relates for the period in which Sodexo has exercised its rights.

13.4 Sodexo shall enable the Supplier to resume delivery and performance of the Goods and Services once Sodexo is satisfied (acting reasonably) that the Supplier will be able to resume delivery and performance of the Goods and Services in accordance with this Agreement, and in particular any Quality Standards after which Sodexo shall cease to exercise any rights pursuant to this Clause in respect of the rights of step-in.

13.5 In addition, the Supplier shall immediately inform Sodexo and the relevant Unit if the Supplier knows or believes that the Supplier will not be (or is unlikely to be) able to deliver all or any of the Goods and Services by the due dates for performance as specified in the Schedule, any Order or otherwise in accordance with this Agreement, Sodexo shall be entitled to terminate this Agreement (or any part thereof) without liability and without prejudice to any other right or remedy Sodexo (including Sodexo Central Purchasing and the relevant Unit) may have.

#### **14 Contract Management**

14.1 The Parties agree to meet or have regular telephone calls throughout the Term of this Agreement at least as frequently as set out in the Schedule:

(a) to review levels of performance against any Quality Standards;

(b) to exchange such management information and data relating to the performance of and possible changes or improvements in Goods and Services as is reasonably necessary for the efficient operation of the Goods and Services; and

(c) to resolve disputes.

14.2 The Supplier shall implement, and maintain throughout the Term, performance, management, monitoring and reporting procedures adequately designed to ensure that the Goods and Services are performed in accordance with this Agreement and to anticipate and, so far as reasonably practicable, avoid any problems.

14.3 The Supplier shall be responsible for the recruitment and provision of suitable staff as are necessary for the provision of the Goods and Services and shall ensure that all staff shall receive proper training in their functions and duties as required under this Agreement.

14.4 The Supplier shall throughout the Term:

(a) ensure that the Supplier's Account Manager or his deputy are the persons responsible for managing the operation of the Goods and Services.

(b) use all reasonable endeavours to ensure continuity of the Supplier's staff and obtain the prior written consent of Sodexo before the appointment of a new Supplier Account Manager, his deputy or other Key Personnel (including the appointment of any individual proposed as a replacement);

(c) not remove any Key Personnel from the provision of the Goods and Services, whilst those Key Personnel are in its employ (whether as employees, contractors, sub-contractors or otherwise), unless such Key Personnel are unable to continue providing the Goods and Services for reasons of poor health, or as a result of any action taken by the Supplier pursuant to its disciplinary and grievance procedures or termination of employment and Supplier shall use reasonable endeavours to provide Sodexo with at least one (1) month's written notice of any change in Key Personnel;

(d) ensure that personnel engaged in the provision of the Goods and Services are appropriately qualified, skilled and trained in the work which they are to perform and that they perform that work in order to enable the

Supplier to meet its obligations under this Agreement; and

(e) implement any schemes of training and instruction from time to time for all staff engaged in the provision of the Goods and Services on all matters concerned with the Goods and Services which are necessary to ensure that the Supplier performs the Goods and Services in accordance with this Agreement.

14.5 Sodexo may to the extent reasonably necessary to preserve the standards and reputation of Sodexo or for reasons of incompetence, poor performance or misbehaviour of such person and following consultation with the Supplier, instruct the Supplier to remove such person engaged by the Supplier to provide the Goods and Services. Sodexo shall provide notice, together with supporting evidence (where reasonable to do so), to the Supplier of its determination prior to taking any action with respect to such person. The Supplier shall not be excused performance of its obligations under the Agreement as a result of compliance with any such instruction.

14.6 Upon receipt of a notice under Clause 14.5, the Supplier will investigate the matters stated in the notice and discuss its findings with Sodexo. If after such investigation, Sodexo believes that it is not in its best interests to have that person working on Sodexo account, the supplier shall, and shall ensure that any relevant Sub-contractor shall, promptly comply with Sodexo's determination.

#### **15 Confidential Information**

15.1 Each party undertakes to the other that during the Term and thereafter it shall keep secret and shall not without the prior written consent of the other party disclose to any third party (except to its professional advisors) any Confidential Information learned by the recipient party or disclosed to the recipient party by such other party pursuant to or otherwise in connection with this Agreement.

15.2 The obligations of confidentiality in this Clause 15 shall not extend to any matter which either party can show:

(a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;

(b) was in its written records prior to the Commencement Date;

(c) was independently disclosed to it by a third party entitled to disclose the same; or  
(d) is required to be disclosed under any applicable law or any regulatory authority, or by order of a court or governmental body or other authority of competent jurisdiction.

## **16 Termination**

16.1 A party ("Non-Defaulting Party") shall be entitled to terminate this Agreement with immediate effect by serving written notice on the other party ("Defaulting Party") if:

(a) the Defaulting Party materially defaults in or commits any material breach of any of its obligations under this Agreement and if (where capable of remedy) the Defaulting Party fails to remedy such breach at the written request of the Non-Defaulting Party within thirty (30) days of notification by the Non-Defaulting Party; or  
(b) the Defaulting Party suffers an Insolvency Event.

16.2 Sodexo shall be entitled to terminate this Agreement:

(a) without cause, by serving not less than the Notice Period to the Supplier at any time;

(b) immediately by giving written notice to the Supplier if the Supplier undergoes a Change of Control without obtaining Sodexo's prior written consent;

(c) immediately by giving written notice to the Supplier if a Sodexo Customer Agreement is terminated, provided that Sodexo shall (where reasonably practicable) use its reasonable endeavours to give the Supplier notice of such termination.

16.3 Either party shall be entitled to terminate this Agreement in accordance with Clause 18.2 of this Agreement.

16.4 On termination or expiry of this Agreement for any reason the Supplier shall:

(a) immediately return to Sodexo or arrange for immediate destruction of, as directed by Sodexo, all materials or documents belonging to or relating to Sodexo (including Sodexo Central Purchasing and the Units);

(b) co-operate with Sodexo (and the relevant Unit) and any nominated new provider of Goods and Services to ensure the smooth handover and continued running of the Goods and Services during such handover including by rendering such assistance as Sodexo (and the relevant Unit) may reasonably request;

(c) within thirty (30) days of the date of expiry or termination submit its final invoice setting out the total amounts due to the Supplier for the

Goods and Services performed in accordance with this Agreement as at the date of expiry or termination and unpaid; and

(d) subject to agreement with Sodexo or the relevant Unit, within fifteen (15) days of expiry or termination collect any Equipment at the Supplier's own risk and expense.

16.5 If the Supplier is the Defaulting Party and Sodexo has incurred costs or other liabilities in leasing, hiring or purchasing equipment for use by the Supplier in the provision of the Goods and Services, the Supplier shall reimburse Sodexo for all costs, losses or other expenses incurred by Sodexo in terminating any agreements concerning this equipment. If the equipment has been purchased outright or the agreements concerning the equipment cannot be terminated, the Supplier shall reimburse Sodexo on a pro-rata basis for the cost of the equipment to Sodexo from the date of termination of this Agreement for the remainder of the Initial Term or any other additional fixed term which has been agreed between the parties in writing.

16.6 For the avoidance of doubt, Sodexo and the relevant Unit shall not be required to follow the dispute resolution procedures set out Clauses 32 and 33 prior to exercising their rights to terminate this Agreement.

16.7 Termination or expiry of this Agreement for any reason will not affect the rights or liabilities accrued prior to termination or expiry or any terms intended expressly or by implication to survive termination or expiry.

## **17 Assignment and Sub-Contracting**

Except pursuant to Clause 5.5, the Supplier shall not be entitled to assign, sub-contract or transfer or purport to assign or transfer (in whole or in part) the benefit of this Agreement to any third party without the prior written consent of Sodexo Central Purchasing (which may be withheld at Sodexo's sole discretion).

## **18 Force Majeure**

18.1 Neither Sodexo (including Sodexo Central Purchasing and the relevant Unit) nor the Supplier shall be liable for any failure to fulfil any of its obligations under the Agreement in so far as such failure is due to a Force Majeure Event. In such circumstances, the affected party shall promptly notify the unaffected party, and shall use all reasonable endeavours to overcome the Force Majeure Event.

18.2 If by virtue of Clause 18.1 the affected party shall be excused the performance of any obligation for a continuous period of ninety (90) days, then the other party may at any time thereafter, and provided that such performance or punctual performance is still excused, terminate this Agreement by written notice to the affected party.

## **19 Non-Solicitation of Employees and Suppliers**

The Supplier agrees that, during the Term and for a period of twelve (12) months thereafter, it will not, directly or indirectly, for itself, or as agent, or on behalf of or in conjunction with any other person, firm, partnership, corporation or other entity, induce or entice any employee or contractor of Sodexo (including Sodexo Central Purchasing and the Units) to leave such employment or contract or cause anyone else to do so.

## **20 Publicity and Advertising**

The Supplier shall not without the prior written consent of Sodexo Central Purchasing or Units advertise, publish or announce (or allow to be advertised or published or announced) that Goods and Services are to be or have been supplied under this Agreement or that the Supplier has any business relationship with Sodexo (including Sodexo Central Purchasing and the Units).

## **21 Anti-Bribery**

21.1 The Supplier warrants that it will not give, offer or pay (either directly or through a third party) the payment of any financial or other advantage to any third parties, which would cause the Supplier or Sodexo to be in violation of any applicable anti-bribery or anti-corruption laws, including the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010.

21.2 The Supplier shall disclose to Sodexo all payments it has made, is obligated to make or intends to make to any agents, brokers, intermediaries or other third parties in connection with the awarding of or maintenance of this Agreement.

21.3 If the Supplier gains knowledge of any conduct by one of its employees, sub-contractors, independent consultants, agents or other third party which constitutes bribery or corruption, or if the Supplier has specific suspicion of such conduct, it shall immediately inform Sodexo of such knowledge and information.

21.4 Sodexo reserves the right to verify either itself or through qualified third parties instructed by it, the Supplier's compliance with this Clause 21 in accordance with the procedures described in Clause 10, (Records and Audit Access).

21.5 The Supplier shall have and shall maintain in place throughout the Term its own policies and procedures (including but not limited to adequate procedures under the Bribery Act 2010) to ensure compliance with all applicable anti-bribery or anti-corruption laws and will enforce them where appropriate.

21.6 The Supplier shall indemnify, keep indemnified and hold harmless Sodexo from and against all expenses, liabilities, injuries, direct, indirect and consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings, judgments and legal costs (on a full indemnity basis) which Sodexo incurs or suffers as a result of any breach by the Supplier of any of its obligations or warranties under this Clause. This indemnity shall not apply to any fine levied on Sodexo as a result of Sodexo's criminal liability.

21.7 If the Supplier breaches any of the Clauses above or otherwise acts in contravention of anti-corruption legislation Sodexo shall have the right to terminate this Agreement without notice and with immediate effect.

## **22 Slavery and Human Trafficking**

22.1 The Supplier warrants that it has taken all reasonable steps to ensure that slavery and human trafficking is not taking place in any of its existing supply chains and in any part of its own business.

22.2 The Supplier represents and warrants that at the date of this Agreement, any responses to Sodexo's slavery and human trafficking due diligence questionnaire are complete and accurate and neither the Supplier nor any of its officers or employees:

- (a) have been convicted of any offence involving slavery or human trafficking; and
- (b) to the best of its knowledge, have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery or human trafficking.

22.3 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains. On request, the Supplier shall provide the results of this due diligence to Sodexo.

22.4 The Supplier shall not subcontract its obligations under this Agreement without the prior written consent of Sodexo;

(a) If Sodexo agrees that the Supplier may subcontract its obligations, the Supplier shall implement an appropriate system of due diligence, audit, and training designed to ensure compliance with Sodexo's anti-slavery and human trafficking policy and the terms of this Clause 22.

22.5 The Supplier shall notify Sodexo as soon as it becomes aware of any breach, or potential breach, of the Supplier's or Sodexo's anti-slavery and human trafficking policy, or any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.

22.6 The Supplier may allow its employees, workers or other staff access to Sodexo's whistleblowing facility for the purposes of Clause 22.5 in order to facilitate the reporting of any suspected breach of the Supplier's or Sodexo's anti-slavery or human trafficking policies. The Supplier shall not subject any employee, worker or staff member who makes use of this facility to any detriment whatsoever.

22.7 The Supplier shall maintain a complete set of records to trace the supply chain of all Goods and Services provided to Sodexo in connection with this Agreement.

22.8 In the event that Sodexo suspects that the Supplier may be in breach of its anti-slavery and human trafficking warranties, or if the Supplier notifies Sodexo that it suspects or knows that there may be a breach of this Clause, the Supplier agrees to respond promptly to Sodexo's enquiries, co-operate with any investigation and allow Sodexo to audit books, records, and any other relevant documentation, or interview any known or suspected participants in human trafficking, slavery, or servitude.

22.9 The Supplier shall implement a system of training for its employees to ensure compliance with Sodexo's anti-slavery and human trafficking policies and the Supplier shall keep a record of all training offered and

completed by its employees to ensure compliance with Sodexo's anti-slavery and human trafficking policies and shall make a copy of the record available to Sodexo on request.

22.10 Sodexo may terminate this Agreement with immediate effect by giving written notice to the Supplier and recover from the Supplier the amount of any loss and costs (including costs reasonably incurred in making other arrangements for the supply of Goods and Services) resulting from such termination if the Supplier commits a breach of any of the Clauses in this warranty.

22.11 The Supplier shall indemnify, keep indemnified and hold harmless Sodexo from and against all expenses, liabilities, injuries direct, indirect and consequential loss (all three of which terms include loss of reputation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings, judgments and legal costs (on a full indemnity basis) which Sodexo incurs or suffers as a result of any breach by the Supplier of any of its obligations or warranties under this Clause 22.

22.12 At the request of Sodexo, the Supplier shall provide all reasonable assistance to enable Sodexo to resist any claim, action or proceedings brought against Sodexo as a consequence of any breach of this Clause 22.

22.13 If Sodexo reasonably believes that it needs to take action in connection with the Goods and Services because the Supplier breaches any of its obligations or warranties under this Clause 22 then Sodexo shall be entitled itself or via a Replacement Supplier to take over the provision of the affected Goods and Services which may include the whole Goods and Services, as pursuant to Clause 13 of this Agreement.

22.14 If, following a reasonable investigation, Sodexo finds that the Supplier has breached its warranties under this Clause 22 and has allowed slavery or human trafficking to take place in its supply chain, Sodexo reserves the right to compel the Supplier to pay reparations to any individuals who have been affected by the breach. Such reparations will be assessed on a case-by-case basis.

22.15 Alternatively if, following a reasonable investigation, Sodexo finds that the Supplier has breached its warranties under this Clause 22 and has allowed slavery or human trafficking

to take place in its supply chain, Sodexo reserves the right to compel the Supplier to implement such appropriate corrective action as it reasonably directs.

### **23 Data Protection**

23.1 The Supplier shall comply with all applicable requirements of the Data Protection Regulation as set out on Sodexo's website (Our Site) of [www.smsbruk.co.uk/GDPRtcs.pdf](http://www.smsbruk.co.uk/GDPRtcs.pdf). This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

### **24 No Partnership/Joint Venture/Agency**

This Agreement shall not operate so as to create a partnership or joint venture of any kind between the parties. Nothing contained in this Agreement shall be so construed as to constitute either party to be the agent of the other. Neither party shall have any authority to make any commitments on the other party's behalf.

### **25 Waiver**

No forbearance or indulgence on the part of Sodexo in enforcing this Agreement shall prejudice Sodexo's (including Sodexo Central Purchasing's and the Units') rights under this Agreement nor shall it be construed as a waiver of such rights.

### **26 Severance**

If any of these conditions (or any part of them) is rendered void or unenforceable by any court or authority of competent jurisdiction then all other provisions of this Agreement will remain in full force and effect and will not in any way be impaired provided the parties agree a replacement provision which is as close as is legally permissible to the provision found invalid, or unenforceable.

### **27 Notices**

27.1 Any notice required or authorised to be given under this Agreement shall be in writing and may be served:

- (a) by personal delivery;
- (b) by registered/special delivery post;
- (c) by recognised international courier; or
- (d) by fax.

27.2 In proving service of any notice hereunder, it shall be sufficient to prove:

- (a) in the case of a notice delivered personally, that it was left at the address for notices herein or any substituted address;
- (b) in the case of a notice sent by post, that the envelope containing the notice was properly addressed to the address in this

Clause or any substituted address, stamped and posted;

(c) in the case of a notice sent by courier, that the envelope containing the notice was properly addressed to the address in this Clause or any substituted address and delivered to the courier, as evidenced by the shipping document;

(d) in the case of a notice sent by fax, that it was properly transmitted to the fax number given in this Clause without any error message provided.

27.3 Notices shall be deemed served:

- (a) in the case of a notice delivered personally, at the time of delivery;
- (b) in the case of a notice sent by registered post, two (2) Business Days after the day of posting; and
- (c) in the case of a notice sent by fax, at the time the sender's fax machine receives in relation to the transmission a satisfactory transmission report.

27.4 Notices shall be served on the parties at the following addresses or by transmission to the following fax numbers or at such other addresses or fax numbers as may be substituted for the purpose by a notice duly served in accordance with the provisions of this Clause 27:

For Supplier: Supplier's Account Manager as specified in the Schedule.

For Sodexo: Head of Legal and Public Affairs  
With a copy to: The Purchasing Liaison

Address: Avalon House, Breckland, Linford Wood, Milton Keynes MK14 6LD, United Kingdom

E-mail: [jay.naido@sodexo.com](mailto:jay.naido@sodexo.com)

### **28 Variations**

No variation or modification (including any specification of the Goods and Services or any Deliverables) shall be valid unless in writing and signed by both parties of this Agreement.

### **29 The Contracts (Rights Of Third Parties) Act 1999**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and the applicable Unit) under the Contracts (Rights of Third Parties) Act 1999.

### **30 Further Assurance**

Each party shall, at its own cost, execute any additional documents and do or procure that any other acts or things are done from time to time to give full effect to this Agreement and

secure to the other party the full benefit of the rights, powers, privileges and remedies conferred upon the other party to this Agreement.

### **31 Entire Agreement**

This Agreement shall constitute the entire agreement between the Supplier and Sodexo (including Sodexo Central Purchasing and the Units) and any other terms, conditions, performance criteria, guarantees or prior representations whatsoever (whether written or oral) shall be of no effect unless expressly incorporated herein. Each party acknowledges that it has not entered into this Agreement in reliance on any statement or representation of the other parties except to the extent as the statement or representation has been incorporated in this Agreement. Nothing in this Agreement shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

### **32 Disputes**

32.1 In the event of any disputes arising out of or in relation to this Agreement Sodexo and the Supplier must first use their respective best endeavours to consult and negotiate with each other, in good faith and, recognising their mutual interests, attempt to reach a just and equitable settlement of the dispute.

32.2 The Supplier must contact the Unit directly in the event that payment of an invoice is not received by the Supplier within 7 days of the due date.

32.3 For disputed invoices, the Supplier will follow Sodexo's disputed invoice procedure as notified by Sodexo to the Supplier from time to time and the Supplier and the Unit will attempt to reach a just and equitable settlement of the dispute.

32.4 If the dispute is not resolved under Clause 32.3 or for any other dispute arising under this Agreement, the Purchasing Liaison and the relevant Supplier's Account Manager must within seven (7) days of a dispute arising convene a meeting to attempt to resolve the dispute. If the Purchasing Liaison and the Supplier's Account Manager agree upon a resolution or disposition of the matter, they will sign a statement setting out the terms of the resolution or disposition and the parties shall ensure that the resolution or disposition is fully and promptly carried out.

32.5 If after a period of ten (10) Business Days (or such longer period as may be agreed

in writing) from the date of a meeting held pursuant to Clause 32.1, the Purchasing Liaison and the Supplier's Account Manager have not resolved the dispute, the dispute shall be referred to persons nominated by each party (the "Appointed Persons") at a senior management or board level. If the Appointed Persons do not reach such a settlement within a further period of ten (10) Business Days, the dispute will be managed in accordance with Clause 33. If the Appointed Persons agree upon a resolution or disposition of the matter, they will sign a statement setting out the terms of the resolution or disposition and the parties shall ensure that the resolution or disposition is fully and promptly carried out.

### **33 Dispute Resolution**

33.1 The parties will attempt to negotiate a settlement of any claim or dispute between or among them arising out of, relating to or in connection with this Agreement including any question regarding its existence, validity or termination. If the matter is not resolved by negotiation, the parties will refer the dispute to mediation. The mediation will take place in London, England (or such other place or places as the parties may agree) and will be initiated by one party giving written notice to the other that negotiations to settle the claim or dispute have failed.

33.2 Following such notice the parties will attempt to agree upon a mediator (the "Mediator"). If the parties are unable to agree upon a Mediator or if the Mediator agreed upon is unable to unwilling to act, either party shall apply to the London Court of International Arbitration ("LCIA") for the appointment of a Mediator.

33.3 Following the selection or appointment of a Mediator the parties will attempt to resolve the claim or dispute through mediation in accordance with the LCIA's mediation rules which are incorporated herein by reference. If the parties fail to agree upon terms of a settlement within sixty (60) days (or such other time as the parties may agree) from the time of the initial reference to mediation, either party may, subject to Clause 34, commence court proceedings.

33.4 Notwithstanding any of the forgoing, any party may seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party,

pending resolution of the dispute in accordance with the procedure set forth above.

### **34 Governing Law and Jurisdiction**

The Agreement shall be governed in accordance with English Law and the parties submit irrevocably to the exclusive jurisdiction of the English Courts in relation to disputes concerning this Agreement.