



SODEXO (BRS) GENERAL TERMS AND CONDITIONS OF PURCHASE (SERVICES) Rev. 08/2017-1.0

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 **Definitions: Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. **Charges:** the charges payable by the Customer for the supply of the Services in accordance with Clause 6 (Charges and payment). **Commencement Date:** has the meaning given in Clause 2.2. **Conditions:** these terms and conditions as amended from time to time in accordance with Clause 12.5. **Contract:** the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions. **Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly. **Customer:** SODEXO MOTIVATION SOLUTIONS U.K. LIMITED registered in England and Wales with company number 02680629. **Customer Materials:** has the meaning set out in Clause 3.3(i). **Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts). **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or

extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. **Mandatory Policies:** the Customer's business policies and codes including Modern Slavery and Human Trafficking Policy; Corporate and Social Responsibility Policy; Anti-Bribery and Anti-Corruption Policy; Ethics Policy; and Data and Privacy Policy. **Order:** the Customer's order for the supply of Services. **Services:** the services, including any Deliverables, to be provided by the Supplier under the Contract, as set out in the Specification. **Specification:** the description or specification for the Services agreed in writing by the Customer and the Supplier. **Supplier:** the independent cinema experience provider and/or entity from whom the Customer purchases the Services. **Product:** as set out in Specification. **Premises:** Supplier who provides cinema experience services to the User at its licensed premises. **User:** a participant who lawfully acquires the Product from the Customer and redeem at the Supplier's Premises. **Interpretation:**

(a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to **writing** or **written** includes faxes.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

(a) any act by the Supplier consistent with fulfilling the Order or accept by Product.

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

3.1 The Supplier shall from the date set in the Order and for the duration of the Contract provide the Services to the Customer in accordance with the terms of the Contract.

3.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

3.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer and User in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- (e) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services to the Customer, will be free from defects in workmanship;
- (f) obtain and at all times maintain all licences and consents which may be

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required for the provision of the Services at the Premises;

- (g) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, and with the Mandatory Policies;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- (k) comply with health and safety of User;

4. CUSTOMER REMEDIES

- 4.1 If the Supplier fails to perform the Services by the applicable dates or accept the Product, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;
 - (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and

(e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

4.2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

4.3 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

5. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with acceptable Product for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

6. CHARGES AND PAYMENT

6.1 The Charges for the Services shall be set out in the Specification, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

6.2 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.

6.3 In consideration of the supply of the Services by the Supplier, the Customer shall, unless otherwise agreed in writing by the Customer, pay the invoiced amounts within 45 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT

purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 6.5 will accrue each day at 1% a year above the Bank of England's base rate from time to time, but at 1% a year for any period when that base rate is below 0%.

6.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.

6.7 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.

7.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer

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Materials) for the purpose of receiving and using the Services and the Deliverables.

7.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7.4 All Customer Materials are the exclusive property of the Customer.

8. INDEMNITY

8.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) any claim brought against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding the Customer Materials); and
- (b) any claim made against the Customer by a third party or User arising out of, or in connection with, the supply of the Services including any violation of applicable health and safety law.

8.2 This Clause 8 shall survive termination of the Contract.

9. INSURANCE

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9.1 Within 10 days of signing this Contract, the Supplier provide a copy of the insurance certificate set out below:

- a) Public & Employer Liability Insurance: £5m;
- b) Professional Indemnity Insurance: £2m

10. TERMINATION

10.1 Without limiting or affecting any other right or remedy available to it, the Customer may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of Control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of Clause 3.3(g),
- (b) for convenience by giving the Supplier one month's written notice.

10.2 Without limiting or affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

11.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. GENERAL

12.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 14, the party not affected may terminate the Contract by giving seven days' written notice to the affected party.

12.2 **Assignment and other dealings.**

- (a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other

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- manner with any or all of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.
- 12.3 Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 12.3(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 12.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12.4 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.5 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 12.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.8 Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, and shall be delivered by hand, or by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by fax, at 9am-5pm on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 12.9 Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 12.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 12.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.