

SOUTH DAKOTA BOARD OF REGENTS

Committee on Budget and Finance

AGENDA ITEM: III – F

DATE: June 10-11, 2015

SUBJECT: Dakota State University Food Service Contract with Sodexo America, LLC

Dakota State University requests Board authorization to go forward with a long-term contract with Sodexo America, LLC, to provide cafeteria style, retail franchise style and catering services to the institution through the institutional housing and auxiliary facilities revenue system. (Attachment I)

DSU's food service vendor agreement with its current food service contractor will end on June 30, 2015. In anticipation of the renewal, DSU issued a request for proposals announcing its intent to negotiate selection of a food service vendor for the next 5 – 10 years. Five vendors including the current food service contractor responded.

The attached agreement with Sodexo emerged from the RFP and negotiation process. The proposed agreement has a term of five years, with an option to extend the agreement for a second five year term.

DSU will provide the food preparation infrastructure, including necessary fixtures, equipment and offices. DSU will be responsible for expenses related to telephone and Internet service and for site alterations necessitated by regulatory changes. DSU will collect food plan payments from students and remit the contracted amounts to Sodexo.

Sodexo will provide the institution a minimum commission of \$205,000 per year, subject to a shift to percentage of net sales income as meal plan participation surpasses 695 participants. Additionally, Sodexo will provide the institution with an annual account of \$10,000 for catered events, and an annual sponsorship of \$5,000 to be applied at the institution's discretion. Sodexo will also provide a \$100,000 commission on July 1, 2016, to be applied towards food service equipment and renovations.

The arrangement contemplates a Sodexo capital investment of \$2,400,000 towards renovation of the DSU Trojan Center Student Union. Sodexo would recoup the principal amount

(Continued)

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve the proposed food service contract between Dakota State University Food Service Contract and Sodexo America, LLC

of investment by treating it as an operating expense amortized at no interest on a straight line basis over nine years. In the event that the agreement should terminate prior to the time that Sodexo recoups its investment, (a) DSU will require that a successor pay Sodexo for any un-recouped portion of the investment or, if DSU takes over the food service as an internal unit, (b) the DSU Foundation will pay Sodexo for any un-recouped portion of the investment.

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MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made and entered into as of this 21st day of May, 2015, by and between DAKOTA STATE UNIVERSITY, an educational institution ("Client"), and SODEXO AMERICA, LLC, a Delaware limited liability company ("Sodexo"), who agree as follows:

ARTICLE I PURPOSE OF THIS AGREEMENT

1.1 Purpose of Agreement. This Agreement sets forth the terms and conditions upon which Client retains Sodexo to manage and operate Food Service for Client's students, faculty, staff, employees, visitors and invited guests.

1.2 Independent Contractor. Sodexo shall be an independent contractor and shall retain control over its employees and agents.

1.3 Confidentiality. This Agreement is considered to be an open record under South Dakota law and is required to be made publicly available. Those provisions of the contract that disclose proprietary information may be redacted. The parties agree that the following sections may be redacted, either because they would disclose information about Sodexo's methods of conducting business or algorithms used to determine prices and thus give advantage to Sodexo's business competitors or because they reveal proprietary information or trade secrets.

ARTICLE II

DEFINITIONS

2.1 Accounting Period. Sodexo's accounting calendar ordinarily contains one five week and two four week Accounting Periods in each quarter of a year.

2.2 Charge. A fee established by Sodexo for goods or services provided by Sodexo.

2.3 Food Service. The preparation, service and sale of food, beverages, goods, merchandise and other items at the Premises. Food Service shall include the following:

- Resident Dining Program
- Retail Sales (excluding vending)
- Catering

2.4 Gross Sales. All sales of food, beverages, goods, merchandise and services in the Food Service operation, including sales taxes.

2.5 Net Sales. All sales of food, beverages, goods, merchandise and services in the Food Service operation, excluding sales taxes.

2.6 Premises. Client's Food Service facilities located at 820 N. Washington Avenue, Madison, South Dakota 57042.

2.7 Smallwares. Dishware, glassware, flatware, utensils and similar items.

ARTICLE III TERM AND EXCLUSIVITY

3.1 Term and Termination.

A. The term of the Agreement is five (5) years ("Initial Term"), commencing on July 1, 2015 and continuing through June 30, 2020 and shall be subject to one (1) additional five (5) year renewal term upon the mutual agreement of the parties, and shall continue thereafter, until terminated by either party as hereinafter provided.

Client and Sodexo shall participate in a transition meeting in accordance with Exhibit A attached at least seven (7) days prior to commencement of Services. If the transition meeting is not held by such time, the commencement of the Services shall be postponed accordingly. Additionally, Client and Sodexo agree to participate in Expectations Sessions throughout the term of this Agreement with a minimum of one (1) per contract year.

B. If either party breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within ten (10) days in the case of failure to make payment when due or sixty (60) days in the case of any other Cause, the notice shall be null and void. If such Cause is not remedied within the specific period, the party giving notice shall have the right to terminate this Agreement upon expiration of such remedy period. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

C. Either party may terminate this Agreement, in whole or in part, at any time upon sixty (60) days' prior written notice to the other party.

3.2 Effect of Termination.

A. All outstanding amounts owed Sodexo shall become due and payable immediately upon notification of termination by Client. Client shall pay Sodexo

in full bi-weekly for services performed during the prior week. Such payments shall be made no later than fourteen (14) days after than the invoice date. In the event Client fails to timely make any payment hereunder, Sodexo immediately may cease to provide Food Service.

B. If the Agreement is terminated by Client and if Client seeks to secure replacement services from another vendor, Client will require that the successor vendor agree to pay Sodexo for any unrecouped sums otherwise chargeable as an operating expense according to the schedule set forth as Exhibit B hereto.

3.3 Exclusive. Client grants Sodexo the exclusive right to perform Food Service on or from the Premises. Client grants Sodexo and its affiliates the right to bid on the procurement of furnishings, fixtures and equipment and on the provision of design services related to the Premises on terms to be agreed upon.

ARTICLE IV EMPLOYEES

4.1 Sodexo Management Employees. Sodexo shall provide management employees to supervise all Food Service employees. Such management employees as of the commencement of this Agreement shall be as follows:

- General Manager
- Catering Manager
- Chef

4.2 Sodexo Nonmanagement Employees. All nonmanagement Food Service employees shall be Sodexo employees. Sodexo shall consider Client's employee policies and practices when establishing policies and practices for Sodexo employees.

4.3 Student Employee Wages. Student employees on Sodexo's payroll shall be compensated at an hourly wage rate of Eight and 50/100 (\$8.50). Such wage rate shall not be increased without the mutual agreement of the parties, unless required by applicable law, regulation, ordinance or court order.

4.4 Personnel Obligations. Each party hereto shall be solely responsible for all personnel actions regarding employees on its respective payroll. Each party shall withhold all applicable federal, state and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees and workers' compensation costs and shall file all required documents and forms.

4.5 Equal Opportunity and Affirmative Action Employer. Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, or veteran status, or any other basis protected by

applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning Food Service employees. Each party affirms that it is an equal opportunity employer. The staffing, promotion, placement or assignment of managers who work on this account must be done without any preference or limitation based on race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, veteran status, or any other basis protected by applicable law. This obligation applies to the recruitment, selection, training, utilization, promotion, termination or other employment-related activities concerning Sodexo's employees. Sodexo recognizes that Client also operates under policies designed to assure an institutional environment free from arbitrary or invidious discrimination and that it has in place policies and procedures to enable and to encourage persons who believe that they have been subjected to discrimination to file complaints and to obtain relief. Sodexo agrees to require its employees to abide by such institutional policies when working at or on behalf of Client. Sodexo also agrees to require such employees to cooperate with Client as necessary to enable Client to carry out its investigations. In the event that a Sodexo employee may be found to have violated Client's policies, Sodexo agrees to cooperate with the institution in taking appropriate corrective measures. Absent documentation that an individual has violated Client's policies, Sodexo will not permit a request or suggestion by a client to place a particular manager in an account to override its non-discrimination policy.

In addition, Sodexo affirms that it is an equal opportunity and affirmative action employer, is legally responsible for all of its employment decisions affecting its own employees, which include thousands of extremely talented and diverse managers, and shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, Executive Order 11246; Rehabilitation Act of 1973; Vietnam Era Veterans Readjustment Assistance Act of 1974; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans With Disabilities Act; and any additions or amendments thereto.

ARTICLE V INVENTORIES, PREMISES, EQUIPMENT AND MAINTENANCE

5.1 Premises and Equipment. Client shall furnish at its expense, Premises and equipment including but not limited to kitchen equipment, suitably furnished office space, including a safe for the temporary holding of funds and fire extinguishing equipment. Sodexo shall take reasonable and proper care of the facilities and return them to Client at termination of the Agreement.

Sodexo and Client shall inventory Client's Food Service equipment. Upon termination of this Agreement, Sodexo shall surrender such inventory of equipment to Client.

5.2 Condition of Premises and Equipment. The Premises and equipment

provided by Client for use in the Food Service operation shall be in good condition and maintained by Client to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health. Client agrees that any modifications or alterations to the workplace or the Premises (whether structural or non-structural) necessary to comply with any statute or governmental regulation shall be the responsibility of Client and shall be at the Client's expense. This provision shall survive the termination of this Agreement.

5.3 Sanitation and Janitorial Service. The responsibilities of the parties with respect to the usual and customary cleaning and sanitation of the Premises shall be as follows:

A. Sodexo's Responsibilities. Sodexo shall be responsible for housekeeping and sanitation in food preparation, storage and serving areas. Sodexo shall clean tops of tables and chairs in the dining area, clean-up of spills or refuse on floors during dining hours, and transport refuse to designated refuse collection areas.

B. Client's Responsibilities. Client shall be responsible for housekeeping and sanitation in customer traffic areas including dining area and the cleaning of dining area floors and/or carpets and all windows, walls, ceilings, ceiling fixtures, drapes, fixtures, air ducts and hood vent systems (per local ordinance). Client shall provide and maintain adequate fire extinguishing equipment for the Premises, pest control and shall be responsible for removal of refuse from refuse collection areas. Client shall be responsible for any costs involved in setting up and cleaning the Premises for functions not managed by Sodexo.

5.4 Maintenance. Client shall, at Client's expense, provide maintenance personnel and outside maintenance services, parts and supplies required to properly maintain the Premises and Client-owned equipment.

5.5 Inventories of Food, Beverages and Supplies. Sodexo shall purchase and own all inventories of food, beverage and supplies. Upon expiration or termination of the Agreement, Client shall purchase, or shall cause the successor contractor to purchase, Sodexo's remaining inventories at Sodexo's invoiced amounts.

5.6 Inventory of China and Smallwares. Client and Sodexo jointly shall inventory all china, if any, and Smallwares owned by Client and shall agree as to required inventory levels. Any inventories below agreed upon levels shall be brought up to such levels at Client's expense. If at any time Sodexo is to provide additional Services not provided for herein, Client shall be responsible to increase, at its own expense, the inventories required for the additional service(s). Client, at its expense, shall maintain the required inventory levels, providing replacements when needed.

5.7 Vehicle. Sodexo shall provide a vehicle for use in the Food Service operation. Sodexo shall be responsible for the vehicle's gas, oil, maintenance, repair, and automobile liability insurance.

5.8 Telephone Expenses. Client shall be responsible for telephone installation costs, local and long distance telephone billings and broadband internet access.

5.9 Meal Program Identification System. Client shall be responsible for all costs related to the electronic meal program identification system, including hardware, software, and on-going supplies.

5.10 Equipment Failure. If electrical or equipment failure causes loss of refrigerated or frozen products, Client shall reimburse Sodexo for fifty percent (50%) of such loss based on invoice cost of the products. If Client's dishmachine equipment becomes inoperative for reason other than Sodexo's negligence, Client shall reimburse Sodexo for 50% of the cost of disposable items used in lieu of reusable items until the dishmachine equipment becomes operative.

5.11 Utilities. Client shall be responsible for the cost of utilities consumed in the Food Service operation.

5.12 Capital Equipment. Client shall provide capital equipment as required for the Services. In the event Client requests Sodexo to purchase equipment on Client's behalf for Client's facility, any equipment purchases made pursuant to this Section shall be billed at the price quoted by Sodexo and paid by Client separate from the financial arrangement detailed in Section 8.2.

ARTICLE VI RESIDENT DINING PROGRAM

6.1 Service and Locations. Sodexo shall provide Food Service for Client's resident dining patrons at the Premises and at such other locations as Client and Sodexo shall agree.

6.2 Meal Plans. The following meal plans selected by Client shall be available to resident dining patrons:

- i. Big Blue Plan - unlimited meals per week, plus \$100.00 in Flex Dollars charged at \$1737.90 per semester
- ii. Dakota 150 Plan - 150 meals (average of 9 meals per week), plus \$200.00 in Flex Dollars charged at 1389.65 per semester
- iii. Dakota 125 Plan - 125 meals (average of 7 meals per week), plus \$335.00 in Flex Dollars charged at 1389.65 per semester

- iv. Trojan Basic Plan - 75 meals (average of 4 meals per week), plus \$525.00 in Flex Dollars charged at 1227.20 per semester. Students need to be at least a 2nd year student in the residence halls to choose this plan or can choose one of the above plans as well.
- v. Trojan Flex Plan - \$1227.20 in Flex Dollars, students must be 3rd year and over in the residence halls to choose this plan.
- vi. Trojan Advanced Plan - \$375.15 in Flex Dollars. Students must be 3rd year and over in the residence halls to choose this plan.
- vii. Trojan Apartments Plan - \$153.85 in Flex Dollars. Only for residents that will be living in the 8 Plex apartments.
- viii. Commuter Plan – 30 meals and \$100 in Flex Dollars. Charged at \$314.00 per semester.

Any Flex Dollars remaining at the end of the fall semester shall roll over to the spring semester. Any unused Flex Dollar balances remaining at the end of the spring semester shall be forfeited to Sodexo's account.

This Agreement between Sodexo and Client provides that Client grants Sodexo the exclusive right to provide Client with meals related to meal plans, debit card points, flex points for Client to resell to its students, faculty and staff at a specified rate per meal or daily rate.

6.3 Guest Meals In Resident Dining Facilities. For guests, prices for meals served in resident dining facilities shall be as follows:

Breakfast:	\$5.50
Lunch:	\$7.00
Light Lunch:	\$6.00
Dinner:	\$8.00
Late Night Dinner:	\$7.00
Brunch:	\$7.50

Plus applicable taxes, if any.

6.4 Unscheduled Service Charges. For service not included in the resident dining rate such as service on Freshman Days, between semesters, commencement and the summer session, Sodexo shall provide Food Service at mutually agreed upon times and charges.

6.5 Preseason Meals. Preseason meals for athletic teams shall be charged to Client at Seven Dollars (\$7.00) for each person each meal.

6.6 Seconds Policy. Unlimited servings of all food and beverage items, with the exception of steak/gourmet night entrees and special event menus, shall be available to resident dining patrons under the following conditions:

A. Sodexo may limit resident dining patrons to one (1) portion of each food item and two (2) beverages the first time through the serving line. Resident dining patrons who do not exit the dining area may return to the serving line or other designated areas for seconds.

B. All food obtained by resident dining patrons from the serving line must be consumed within the dining area. Exception would be made for to-go container dining option.

6.7 Serving Style. Except for variations agreed to by both parties hereto, all resident dining meals shall be served cafeteria-style. Sodexo encourages occasional variations from this style, provided that planning and implementation of variations are coordinated with Sodexo in advance.

6.8 Menus and Prices. Sodexo shall recommend prices to be charged for food and beverages, and shall prepare menus and establish quantities and portions to be served.

6.9 Special Diets. Sodexo shall supply any medically required special diets for resident dining patrons when prescribed and approved in writing by a medical doctor and Client.

ARTICLE VII RETAIL SALES PROGRAM

7.1 Locations. Sodexo shall provide retail products at the Premises and at such other locations as Client and Sodexo shall agree.

7.2 Branded Concepts. Sodexo shall operate the Branded Concepts at Client's Premises under the conditions set forth below. 'Branded Concepts' are defined as food and beverage systems operated by Sodexo through national and regional third party license agreements or franchise agreements or through Sodexo's own in-house trademarked brands.

A. Sodexo shall control all aspects of the Branded Concepts operations, including menus, recipes, pricing, staffing and hours of operation.

B. Representatives of the licensor of the Branded Concepts shall be allowed access to the Premises during reasonable business hours for quality assurance inspections of the Branded Concepts.

C. Sodexo shall notify Client twenty (20) days in advance of any termination or expiration of a license or franchise agreement related to a Branded Concept. Sodexo and Client shall mutually determine what operation, if any, will replace such Branded Concept. In any event, the Branded Concepts operation shall terminate upon termination or expiration of the Agreement.

D. Upon termination or expiration of the Agreement, Sodexo shall remove related equipment in accordance with the terms of the applicable license agreements.

E. At commencement of the Agreement, Sodexo is to operate or cause to be operated the following Branded Concepts:

1. Einstein's Brothers Bagel

7.3 Retail and Concession Product Prices. The initial prices charged by Sodexo for food and other products served by Sodexo in the retail and cafeteria operations shall be reasonable and competitive with prices charged in comparable establishments in the geographic area of the Premises for comparable products, similarly prepared and of like quality and portion. No less than annually, Sodexo shall adjust pricing to reflect the increase in the Producers Price Index for Food and Beverage Stores.

7.4 Catered Functions. Prices for catered functions, including but not limited to Client or third party functions, shall be established by mutual agreement of the parties. Sodexo shall be responsible for collection of amounts due for catered functions.

7.5 Commissions. Sodexo shall pay Client a commission on all Board revenue, flex points, internal, external and third party catering sales, guest meal sales, conferences and all retail sales. The commission structure will be as follows:

Sodexo shall pay Client a fixed commission in the amount of \$205,000 per year until such time as the number of meal plan participants reaches six hundred ninety five (695). Thereafter, Sodexo will pay Client a percentage commission based on the following scale:

<u>Meal Plan Participants</u>	<u>% of Net Sales</u>
695-744	11%
745-794	13%
795-844	15%

Client and Sodexo agree to review the commission amounts in this provision on an annual basis,

Sodexo shall prepare a statement of sales and commissions for each Accounting Period and shall submit such statement with any payment due to Client for such Accounting Period.

7.6 Financial Offsets. Sodexo shall pay commissions due to Client at the appropriate settlement time; provided, however, that Sodexo shall first offset any past due amounts owed by Client to Sodexo including interest charges.

ARTICLE VIII FINANCIAL ARRANGEMENTS

8.1 Resident Dining Billing. After census date of each term Sodexo shall invoice Client for one hundred percent (100%) of meal plans. Such invoice shall be paid by Client by the third week of the semester. . A reconciliation of meal plans issued to students, and paid to Sodexo, will be completed at the end of each semester. Payment will be made to either party at the end of the academic year as a result of these reconciliations.

8.2 Billing. Sodexo shall submit all billings to Client as incurred. Payments shall be due within fifteen (15) days after the invoice date. Client shall pay interest on any amount not paid when due at the lesser of one and one-half percent (1.5%) each month or the highest contractual interest rate allowed by applicable state law.

8.3 Retail Sales. Sodexo shall retain all cash receipts realized from the Retail Sales operations and pay operating expenses. Any profit or loss shall be for Sodexo's account.

8.4 Right of Offset or Pre-Bill. At any time when Client is over thirty (30) days past due on any obligations to Sodexo, Sodexo shall have the right to offset, from any sums owed by Sodexo to Client, all or any portion of such outstanding receivables.

Additionally, Sodexo shall have the right, at any time when Client is over thirty (30) days past due on any obligations to Sodexo, at Sodexo's option, to require that Client pay on a pre-billing basis at least one (1) week in advance of each Accounting Period for the estimated amount due Sodexo for that Accounting Period. The estimated amount would be adjusted and reconciled to the actual amount in the next pre-billing invoice or, if Client is no longer past due on its obligations to Sodexo, with the next invoice due under Section 8.2 above.

8.5 Catering Fund. At the beginning of each contract year, and for every year thereafter that this Agreement is in effect, Sodexo shall provide a catering fund of Ten Thousand Dollars (\$10,000.00) to be used at the Client's discretion for catered events. Any unused catering funds remaining at the end of each academic year or upon

termination of the Agreement shall be retained by Sodexo.

8.6 Annual Sponsorship. For every year that this Agreement is in effect, Sodexo shall provide to Client one (1) sponsorship in the amount of Five Thousand Dollars (\$5,000.00). Client shall be responsible for determining what the sponsorship will go towards. If the Agreement is terminated for any reason, Sodexo shall have no future obligation as it relates to this Section 8.6.

8.7 Sodexo's Investment. On or about September 1, 2016, Sodexo shall provide funds to Client for renovation of the DSU Trojan Center Student Union in an amount equal to Two Million Four Hundred Thousand Dollars (\$2,400,000.00) ("Investment"). Sodexo shall amortize the Investment on a straight-line basis over nine (9) years, September 1, 2016. Such amortization shall be charged as an operating expense of the Food Service operation. Client shall own the Investment, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

Should (a) Sodexo's Agreement with the Client be terminated or canceled by either party prior to the completion of its term, including all renewals and extensions, and Client enters into an agreement with an entity other than SODEXO or its related entities for the provision of food services similar to the scope of the Agreement, or (b) upon completion of the term of the Agreement including all renewals and extensions, Client enters into an agreement with another entity other than SODEXO or its related entities for the provision of Food services similar to the scope of the Agreement, Client will cause the new food service contractor to remit to SODEXO an amount equal to the unamortized portion of the Investment within sixty (60) days of execution of the new contract.

Should Sodexo's Agreement with the Client be terminated or canceled by either party prior to the completion of its term, including all renewals and extensions, and Client does not enter into an agreement with an entity other than SODEXO for the provision of food services similar to the scope of the Agreement and Client self performs its Food Service, Client cause the Dakota State University Foundation to will remit to SODEXO an amount equal to the unamortized portion of the Investment within sixty (60) days of notice of termination..

The capital investment is a project estimate and is for budgeting purposes only. It is based on current information and is a result of Sodexo's best effort to provide a budget projection and shall not, in any way, be construed to be a guaranteed price.

The estimate will be adjusted based on design development and input from the client based on needs and desires including any presently unknown factors. In addition, existing field conditions must be examined along with any code compliance necessities and local jurisdiction requirements. These may result in an additional scope of work above the current estimates and is noted that the estimate does not include allowance for abatement of, or testing for hazardous material

8.8 Fixed Commission. On or about July 1, 2016, Sodexo shall provide to Client an amount equal to One Hundred Thousand Dollars (\$100,000.00) ("Fixed Commission #1") to be used for Food Service equipment and renovations. If the Agreement expires or is terminated for any reason prior to July 1, 2016, Sodexo shall have no further obligations under this provision.

8.9 Facilities Consult. During the first year of this Agreement Sodexo shall, at no cost to Client, provide facilities management consultation in the form of a walk through and provide key areas of opportunity.

8.10 Meal Passes. Upon commencement of this Agreement Sodexo shall provide Client 1000 Guest Meal Passes per academic year to provide to perspective students and their families when they visit campus.

ARTICLE IX FINANCIAL ADJUSTMENTS

9.1 Changes in Policies and Practices. The financial terms set forth in this Agreement and other obligations assumed by Sodexo hereunder are based on conditions in existence on the date Sodexo commences operations, including by way of example, Client's student population; labor, food and supply costs; and federal, state and local sales, use and excise tax. In addition, Sodexo has relied on representations regarding existing and future conditions made by Client in connection with the negotiation and execution of this Agreement. In the event of a change in the conditions or the inaccuracy or breach of, or the failure to fulfill, any representation by Client, the financial terms and other obligations assumed by Sodexo shall be renegotiated on a mutually agreeable basis to reflect such change, inaccuracy or breach.

9.2 Inflation Adjustments. There shall be an annual adjustment to financial terms to reflect, at a minimum, increases in the Consumer Price Index Food and Beverage away from home ("CPI").

9.3 Financial Assumptions. The financial terms of the Agreement are based upon the following assumptions:

Operating hours are:

A. The Market Place:

	Monday thru Thursday	Friday	Saturday	Sunday
Breakfast	7:30am – 10:00am	7:30am – 10:00am		

Continental Breakfast	10:00am – 10:45am	10:00am – 10:45am		
Brunch			11:30am – 1:30pm	11:30am – 1:30pm
Lunch	11:00am – 1:00pm	11:00am – 1:00pm		
Light Lunch	1:00pm – 4:45pm	1:00pm – 4:45pm		
Dinner	5:00pm – 7:30pm	5:00pm – 7:30pm	5:00pm – 6:30pm	5:00pm – 7:00pm
Late Night Dinner	8:00pm – 11:00 pm			

B. Einstein Bagels:

Monday thru Thursday	Friday	Saturday and Sunday
7:30am – 6:30pm	7:30am – 5:00pm	Closed

C. Bits n Bytes:

Monday thru Thursday	Friday	Saturday and Sunday
11:00am – 11:00pm	11:am – 5:00pm	Closed Saturday Open Sunday 6:30pm to 11:00pm

In the event of a change in assumptions, the financial terms shall be subject to adjustment.

9.4 Adjustments. The financial arrangement will be adjusted to reflect additional costs incurred or savings realized by Sodexo (i) in connection with the implementation of legislation or other legal requirements, including, but not limited to, the implementation of the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010, which comprise the health care reform of 2010, or other health care rules and regulations, or any modifications thereto or (ii) increases in benefit costs paid by Sodexo on behalf of covered employees. The adjustment to the financial arrangement will be effective from the date the events of (i) and/or (ii) occur.

ARTICLE X
GENERAL TERMS AND CONDITIONS

10.1 Taxes.

A. Sodexo and Client shall each bill and collect sales taxes, if applicable, on all meals and services for which each respectively collects revenue from customers. Sodexo shall bill and collect sales and use taxes, if applicable, on purchases billed to Client. Client shall be responsible for remittance to the taxing authority of any such taxes collected by Sodexo on behalf of Client and delivered to Client.

B. Sodexo shall be responsible for its city, state or federal income taxes including any tax burdens or benefits arising from its operations hereunder. This provision shall survive termination of the Agreement.

10.2 Compliance with Law. Sodexo shall comply with all applicable laws, ordinances, rules and regulations relating to Food Service sanitation, safety and health, and shall maintain all necessary licenses and permits.. Client shall cooperate with Sodexo to accomplish the foregoing.

Sodexo shall process credit/debit card transactions on Client's premises using Sodexo provided technology systems and broadband internet connectivity. This connectivity is to be provisioned by Sodexo and this connectivity will exist independent of the Client's existing network infrastructure. Client will grant Sodexo and its contractors access to all necessary points of demarcation for the provisioning of broadband internet connectivity and provide Sodexo with physical cabling structure necessary to extend broadband internet connectivity to the credit/debit cardholder data environment and associated hardware. Should Client be unable or unwilling to provide such cabling, Sodexo will install necessary cabling components using a Sodexo contracted vendor and will grant Sodexo and its contractor access to all necessary demarcation points and data closets in order to complete installation. Sodexo will provide network security and management, and all associated hardware, for the credit/debit cardholder environment at Client's premises through Sodexo's third-party provider. Sodexo will adhere to and maintain its network and data security practices at Client's premises in compliance with PCI DSS (Payment Card Industry Data Security Standard (<http://www.pcisecuritystandards.org>)).

10.3 Insurance. The parties shall maintain insurance as follows:

A. Workers' Compensation Insurance. Each party shall maintain workers' compensation coverage as required by state law and Employers' Liability in the amount of One Million Dollars (\$1,000,000.00) each accident covering all of its employees employed in connection with the Food Service operations.

B. Comprehensive or Commercial Insurance. Sodexo shall maintain during the term of the Agreement, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance with a Combined Single Limit of not less than Five Million Dollars (\$5,000,000.00) for each occurrence, including, but not limited to,

Personal Injury Liability, Blanket Contractual Liability and Products Liability, covering only the operations and activities of Sodexo under the Agreement and, upon request, shall provide Client with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days' prior written notice of cancellation. Client shall be named as an additional insured under Sodexo's policies of insurance to the extent Client is indemnified pursuant to Section 10.5.

C. Property Insurance. Client shall maintain, or cause to be maintained, a system of coverage (either through purchased insurance, self-insurance, or a combination thereof) to keep the buildings, including the Premises, all property contained therein, and Client's other property insured against loss or damage from fire, explosion or other cause normally covered by special causes of loss form and builders risk property insurance policies.

10.4 Non-Sodexo Approved Vendors. Client understands that Sodexo has entered into agreements with many vendors, manufacturers and suppliers of products which (i) give Sodexo the right to inspect such vendors', manufacturers' and suppliers' plants and/or storage facilities and (ii) require such vendors, manufacturers and suppliers to adhere to standards to ensure the quality of the products purchased by Sodexo for or on behalf of Client. Client shall not require Sodexo to use products from non-Sodexo approved vendors, manufacturers or suppliers.

10.5 Responsibilities of the Parties. Each party to this Agreement shall be solely responsible for any and all actions, suits, damages, liability or other proceedings brought against it as a result of the alleged negligence, misconduct, error or omission of any of its officers, agents or employees. Neither party is obligated to indemnify the other party or to hold the other party harmless from costs or expenses incurred as a result of such claims; and each shall continue to enjoy all rights, claims and defenses available to it under law. This provision shall survive termination of the Agreement.

10.6 Trade Secrets and Proprietary Information. During the term of the Agreement, Sodexo may grant to Client a nonexclusive right to access certain proprietary materials of Sodexo, including menus, signage, Food Service survey forms, software (both owned by and licensed to Sodexo), and similar items regularly used in Sodexo's business operations ("Proprietary Materials"). In addition, Client may have access to certain non-public information of Sodexo, including, but not limited to, recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, surveys and studies, and similar compilations regularly used in Sodexo's business operations ("Trade Secrets"). Trade Secrets shall not include (i) any information which at the time of disclosure or discovery or thereafter is generally available to and known by the public or the relevant industry (other than as a result of a disclosure directly or indirectly by Client), or (ii) any information which was available to Client on a non-confidential basis from a source other than Sodexo, provided that such source was not bound by an agreement prohibiting the transmission of such information, or (iii) any information independently developed or

previously known without reference to any information provided by Sodexo. Sodexo will provide written notification to Client that specifically identifies the information that it protects as trade secrets. The notification will ordinarily precede or accompany the disclosure of the information, but if such information is disclosed informally, and if Sodexo provides written notification within fourteen calendar days thereafter that it protects the information as a trade secret, the informally disclosed information will thereafter be treated as a trade secret.

Client shall not disseminate any Proprietary Materials or disclose any of Sodexo's Trade Secrets, directly or indirectly, during or after the term of the Agreement. Client shall not photocopy or otherwise duplicate any such material without the prior written consent of Sodexo. All Proprietary Materials and Trade Secrets shall remain the exclusive property of Sodexo and shall be returned to Sodexo immediately upon termination of the Agreement. Without limiting the foregoing, Client specifically agrees that all software associated with the operation of the Food Service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to Sodexo and not Client. Furthermore, Client's access or use of such software shall not create any right, title interest, or copyright in such software, and Client shall not retain such software beyond the termination of the Agreement. Any signage, servicemark or trademark proprietary to Sodexo shall remain the exclusive property of Sodexo and shall be returned to Sodexo immediately 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.

10.7 Assignment. This Agreement may not be assigned by either party without the written consent of the other, except Sodexo may, without prior approval and without being released from any of its responsibilities hereunder, assign this Agreement to any affiliate or wholly-owned subsidiary of Sodexo.

10.8 Notice. Any notice or communication required or permitted to be given hereunder shall be in writing and served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To Client: Dakota State University
Attention: _____
820 N. Washington Avenue
Madison, South Dakota 57042

To Sodexo: Sodexo America, LLC
Attention: Kirt Ingram
Senior Vice President
10150 Stone Ridge Terrace
Parker, Colorado 80134

and: Sodexo America, LLC
Attention: Law Department
9801 Washingtonian Blvd., Dept. 51/899.74
Gaithersburg, Maryland 20878

and/or to such other persons or places as either of the parties may hereafter designate in writing. All such notices shall be effective when received.

10.9 Excusable Delay. If a Party cannot perform any of its obligations under this Agreement because of natural disaster, actions of governmental bodies, strikes, lockouts, riots, acts of war, communication line failures, power failures, fires or similar events or circumstances outside that Party's control, the Party that cannot perform shall promptly notify the other in writing, and shall do everything reasonably possible to resume performance.

A. The parties to this contract agree to prepare emergency action plans for the continuation of services and provisions as contemplated herein in the event of Excusable Delay or pandemic, epidemic, or other biological contagion emergency. The plan shall be reviewed annually by the parties and must include the following elements:

- Procedures for continuation of vital services and provisions to non-evacuated, quarantined, or stranded students, employees and staff.
- Persons who shall have responsibility for determination of emergency procedures and actions and who are to be contacted for information and clarifications.
- Employee accountability to observe, and staff authority to impose, medical safeguards and practices needed for the continuation of vital services and provisions.
- Overtime and extraordinary costs, accounting, and compensation for necessary staff and employees.

B. Upon receipt of notice, and except for accrued payment-related obligations, all obligations under this Agreement are immediately suspended.

C. In the event of Excusable Delay which interferes with performance of obligations, upon request, the each part shall take all reasonable steps to execute emergency plans and to continue to perform. For purposes of this section biological pandemics, epidemics, or contagion of any nature shall not be treated as Excusable Delay, but the Parties shall be obligated to execute emergency plans pursuant to section 10.9.A, above

D. If the period of non-performance exceeds 60 days from the receipt of notice, the Party receiving the notice may terminate this Agreement with written notice within 30 days.

10.10 Construction and Effect. A waiver of any failure to perform under this Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any exhibits referred to herein are made a part of this Agreement by reference, provided that in the event of a conflict between the terms of such exhibit or any other document incorporated herein, and the terms of this Agreement, the terms of the Agreement shall govern.

10.11 Amendments to Agreement. All provisions of this Agreement hereto shall remain in effect throughout the term thereof unless the parties agree, in a written document signed by both parties, to amend, add or delete any provision. This Agreement may not be changed other than by an agreement in writing signed by the parties hereto. Email correspondence shall not qualify as a written document signed by an authorized signatory.

10.13 Regulations and Access. Client shall provide Sodexo with reasonable access to, and use of, the Premises to permit Sodexo to perform its obligations under this Agreement, it being understood by the parties that Client does not grant to Sodexo the exclusive use of the Premises. Client may make reasonable regulations for the use and occupancy of the Premises and shall give Sodexo written notice thereof. Client shall have the right upon prior written notice to Sodexo, reasonable under the circumstances, to relocate all or a portion of the Premises or to withdraw a portion of the Premises. Client grants Sodexo approval to use in performance of its services on the Premises all promotional, informational or marketing activities or materials, including the names, trademarks, logos and symbols of Sodexo in order to provide the customer the complete Sodexo Experience.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first signed or the first day of the Initial Term, whichever is sooner.

DAKOTA STATE UNIVERSITY

By: _____
 Name (printed): _____
 Title: _____

SODEXO AMERICA, LLC

By: _____
 Name (printed): Jeffrey M. Lataille
 Title: Regional Vice President

EXHIBIT "A"**TRANSITION MEETING****Definition:**

Transition Meeting is a meeting that is always held **prior** to opening a new account or starting a new service at an existing account.

Objectives:

1. To transform individual client(s) expectations into one set of prioritized institutional expectations,
2. To start-up the new service in accordance with the institution's expectations,
3. To provide for a solid foundation upon which to build long lasting and mutually beneficial relationships.
4. To articulate and gain consensus of Sodexo's objectives / expectations from the business relationship.

Participants:

Client: Client liaison(s) and at least one of the following executives: Chief Executive Officer, Chief Operating Officer, Chief Financial Officer.

Sodexo: Sales Director, District Manager responsible for the Agreement and (if identified) the General Manager ultimately responsible for Sodexo's performance. Senior Vice Presidents and other company executives should attend on "as needed basis".