



**CAMPUS DINING SERVICES AGREEMENT
CONTRACT # 12-06
BETWEEN THE COMMONWEALTH OF VIRGINIA,
University of Mary Washington and Sodexo Operations, LLC
November 5, 2012**

DEFINITIONS

As used herein, the terms below shall have the following meanings.

"Campus" shall mean all properties of and administered by University of Mary Washington, at all locations in Fredericksburg, Stafford, and King George, Virginia.

"Premises" shall mean any location on any Campus where any equipment shall be placed or products sold.

"Contract Year" as used in capitalized form shall mean a twelve-month period commencing on the first day of the Term (August 1) or an anniversary thereof.

SECTION A. - GENERAL PROVISIONS

A.1 SCOPE OF AGREEMENT

The University of Mary Washington ("UMW") and Sodexo's affiliate, The Wood Company, a Pennsylvania corporation and wholly-owned and indirect subsidiary of Sodexo Operations, LLC, are entering into an agreement regarding the scope of services to be provided by Sodexo as set forth in Section A.1 herein.

This Agreement specifies the contractual terms and conditions between the Commonwealth of Virginia, University of Mary Washington hereinafter referred to as "the University", "Commonwealth", or "UMW", located at 1301 College Avenue, Fredericksburg, Virginia 22401, and Sodexo Operations, LLC with its principle place of business at 9801 Washingtonian Boulevard, Gaithersburg, Maryland 20878, here and after referred to as "Contractor" or "Sodexo", for providing campus dining and catering services, along with required support thereof. The Contractor shall be required to furnish a complete campus dining service program which shall conform to the terms and conditions of this Agreement.

The Contractor shall be required to deliver and install equipment and product, and provide labor and all required support services (the "Services") on behalf of University of Mary Washington pursuant to this Agreement (the "Agreement"). The Agreement shall include: the University's Request For Proposal # 12-06, dated February 6, 2012, including attachments, and addenda numbers 1 - 3 dated February 13, 2012, February 17, 2012, and March 8, 2012, respectively (which together comprise the "RFP"), along with the Contractor's proposal dated March 14, 2012, Contractor clarification dated May 2, 2012 responding to Round 1 negotiation, Contractor clarification dated May 30, 2012, (which are included by definition in the "Proposal"), in response thereto, all of which are herein incorporated by reference. In the event of a conflict between the RFP, the Contractor's proposal, the clarification letters, and this

Agreement, the order of precedence shall be this Agreement, the General and Special Terms and Conditions of the RFP, the Contractor's proposal and clarifications, and the RFP.

A.2 TERM

The Agreement shall begin on August 1, 2012, and will remain in effect through July 31, 2017, unless extended or terminated under the conditions outlined within this Agreement. The University reserves the right to renew this Agreement for five (5) additional one-year periods under the same terms and conditions of the original agreement (including any adjustment to fees in accordance with Section B.7).

A.3 SCHEDULE OF OPERATION

Location	Current Hours		2013 Proposed Hours
Seacobeck	M-Th Fri Sat Sun	7:15am-8:00pm 7:15am-7:00pm 9:30am-6:30pm 9:30am-7:00pm	M-Th 7:00am-8:00pm Fri 7:00am-7:00pm Sat 9:30am-7:00pm Sun 9:30am-7:00pm
Naturally Woodstock	M-F Sat/Sun	11am-11pm 5pm-11pm	M-F 11am-11pm Sat/Sun 5pm-11pm
Joe Stacks	M-F Sat Sun	7:30am-10pm 12pm-10pm 12pm-10pm	Subway M-F 7:30am-12am Sat 12pm-12am Sun 12pm-12am
Nest/WOW Café & Wingery	M-W Th & F Sat Sun	11am-10pm 11am-1:30am 12pm-1:30am 12pm-10pm	M-W 11am-10pm T&F 11am-1:30am Sat 12pm-1:30am Sun 12pm-10pm
Nest/Vocelli	M-F Sat/Sun	11am-10pm 12pm-10pm	M-F 11am-10pm Sat/Sun 12pm-10pm
Nest/Vocelli Delivery	Sun-W Th-Sat	5pm-11pm 5pm-12am	Sun-W 5pm-12am Th-Sat 5pm-2am
Simpson/ Jazzman's Cafe	M-F M-Th	11am-2pm 6pm-9pm	M-F 8am-2pm M-Th 6pm-11pm

Seacobeck Summer School Schedule:

Two 5 week sessions

Monday – Friday:

Breakfast 7:30- 8:30a.m.
Lunch 11:30a.m – 1:15p.m.
Dinner 5:00 – 6:30 p.m.

Saturday -Sunday:

Brunch 10:30 a.m.- 1 p.m.
Dinner 5 – 6 p.m.

Hours of Operation may be amended by agreement of both parties as necessary for changes in business conditions, student programming, satisfaction, and/or other considerations.

The Eagles Nest:

The Eagles Nest will close upon completion of spring semester, and re-open prior to commencement of the fall semester, at dates to be mutually agreed upon.

A.4 STUDENT MEAL PLANS

a. Board Plan Prices 2012-2013

In consideration of services to be provided herein, Sodexo will charge the University Board Plan prices as outlined herein. The following meal plan options will be offered:

PLAN	PRICE PER PARTICIPANT PER DAY
Plan Description	Revised Daily Rate
Super Plan	\$8.77
90 Block	\$6.23
150 Block	\$6.89
225 Block	\$7.31
275 Block	\$9.03
60 Block Commuter	\$4.13

The Board Plan prices are based on a minimum number of 204.66 Board billing days per academic year.

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

b. Student Participation in Plans

Freshmen are required to enroll in one of the following plans: 225, 275, or Super. All other students living on campus are required to enroll in one of the following plans: 150, 225, 275, or Super. All students living in University-owned apartments are required to be on the 90, 150, 225, 275, or Super. All students living on campus are required to subscribe to a non-commuter meal plan, unless an exception is granted by the University.

c. Staff Participation in Plans

Sodexo will provide twelve (12) 225-block plans and five (5) 150-block plans to the UMW graduate staff and on-campus residence life professionals at no additional charge to the University.

d. Meal Plan Changes:

Proposals for any changes in meal plans for subsequent years must be received prior to November 1 of each contract year.

e. Early Arrivals:

Students who require campus dining in advance of the meal plan days shall be billed at the 150 block daily rate. The University will provide Sodexo with a list of a minimum number of students one week prior to their arrival date. This list will comprise the minimum student guarantee.

f. Schedule:

The student board plan meal pricing, and hours will begin with the dinner meal prior to the start of classes each semester and will end with the meal prior to the closing of the residence halls for students. Flex is part of the board plan and will follow the same schedule.

g. Meal Plan Growth

I. Commuters

The 2011-2012 capture rate was 36%. Sodexo shall target a 50% meal plan capture rate among all viable commuters within three (3) years at the following growth rates:

Year 1 4%
Year 2 4%
Year 3 6%

II. Residential Students

Sodexo will target increasing the retention rate in meal plans of 224 block and above for those students in traditional housing, and in plans 150 and above for students living in apartment style housing.

Sodexo shall launch an annual marketing campaign to achieve the aforementioned growth; marketing strategies shall be developed and presented to University by July 15, 2013, and annually thereafter. Progress on above goals shall be provided annually on October 1 and March 1.

h. Holiday Breaks:

Meals during academic breaks, Thanksgiving /Winter break

Sodexo shall maintain operations, as mutually agreed, during Fall break and Spring break, at other breaks a dining option will be made available if the following conditions exist:

A minimum of 50 students on plan; students will use a declining balance plan with amount to be based on door rates; dining venue(s) open will be based upon actual number of students on campus as coordinated with Student Affairs

In the event of a break with less than 50 students, Sodexo will work with the University to develop a solution that meets the needs of all parties.

i. Casual Meal Prices

For guests of the University or the students, Sodexo will charge the following casual meal rates:

		<u>Flex</u>	<u>Cash/EagleOne</u>
Breakfast	\$	4.90	6.00
Lunch	\$	6.75	8.00
Dinner	\$	9.20	10.30
Sat. Brunch	\$	9.20	10.30
Sun. Brunch	\$	10.30	10.90

j. Summer School

Beginning Summer 2013, a Summer meal plan will be offered. The details of the plan will be mutually agreed upon during the 2012-2013 academic year.

A.5 CONFERENCE PROGRAMS

The standard summer conference daily rate will have a base daily rate of \$24.30, unless mutually agreed upon by the University and Sodexo.

A.6 CATERING

a. Catering Plan

Sodexo shall provide an annual catering plan targeting multiple audiences including: students, the university community at-large, and customers external to the university. As part of this plan, Sodexo shall also establish an annual expectations meeting with key catering customers focused exclusively on catering performance and suggestions for improvement. The plan shall be presented, no later than November 30, 2012, and annually thereafter.

Sodexo shall develop a pick-up menu to provide price competitiveness for small events; and provide pick-up catering options through its various retail locations (e.g. Woodstock Café, Vocelli, WOW). The menu shall be presented to the contract administrator or his designee no later than January 7, 2013.

b. Commission and Revenue

External catering commissions shall be 15%.

Revenue from external catering and summer conferences are expected to grow at 7% annually over next three years. Sodexo will guarantee that the commissions on external catering will increase by 7% annually from each prior contract year.

And, if annual goals are not met, UMW will receive guaranteed commissions based on the external catering goal figure. For year one of this agreement, \$200,000 of the Commissions identified in Section B.2.e of this agreement shall be designated as the base guaranteed commissions amount on catering; this amount shall increase annually by at least 7% annually (as stated above) as part of the commissions calculation owed to the University each year. Both parties agree to negotiate changes in the catering commissions guarantee in the event of changing business conditions noted by both parties.

c. Catering Exemptions

Sodexo shall maintain Food Service exclusivity, including the Dahlgren campus, with the exceptions noted below:

- i. University Departments may make food purchases for \$50.00 or less in value without requesting a release or using the exclusive contract for on-campus food service.
- ii. The Dahlgren Campus must use this contract for non-UMW affiliated groups in excess of One-thousand Dollars (\$1,000.00), and UMW sponsored events in an amount of Five Hundred Dollars (\$500.00) or more per event, catering on the Dahlgren campus below these thresholds is exempt from this contract.
- iii. The Eagle Village complex merchants and UMW Foundation offices are exempted from the exclusivity agreement.
- iv. These exempted events are reviewed annually by the Division of Student Affairs and currently include the following but may be subject to change.:
 - o "Devil Goat Day"
 - o "Rocktoberfest"
 - o Community Welcome Fair (New Student Orientation)
 - o Multicultural Fair
 - o "Taste of Asia"

- "Clu. arnival"
- EagleOne Vendor Taste Tests
- Meals for Performers (per entertainment contract)

A.7 OTHER

a. Meal Tickets and Admissions Discount

On August 1, 2012, and on August 1 of each subsequent contract year, Sodexo shall deliver 100 meal tickets to the Contract Administrator, who will in turn deliver them to the Admissions Office, to be used for prospective students. These meal tickets will be valid for one year. In addition, unlimited 25% discount coupons are available for the Admissions Office to distribute to visiting students and parents.

b. Eagle Express Cart

The Eagle Express Cart will be located in an area mutually agreed upon between Sodexo and the University; operating hours may be modified and/or eliminated with opening of the food truck.

c. Exam Late Night Breakfast

Sodexo shall provide complimentary exam breaks for all students (regardless of meal plan subscriptions).

d. Food Truck program

The Food Truck program shall be created and operational no later than March 2013.

e. Faculty Staff Dining Room

The price for employee breakfast, lunch and dinner, served in all Seacobeck venues, shall be \$ 5.00 (price inclusive of state and local taxes). These prices will remain unchanged through July 31, 2014. The hours of the Faculty Staff Dining Room are Monday-Friday 11:30 a.m. – 1:30 p.m., August – May. Faculty and Staff meals (breakfast, lunch and dinner) shall be available at the same rates during summer session.

SECTION B - FINANCIAL CONSIDERATIONS

B.1 FINANCIAL ARRANGEMENTS

Except as otherwise provided in the contract documents, Sodexo will be responsible for all costs of managing and operating the dining service and catering services. Sodexo, in Sodexo's own name, and its own expense, shall make all purchases of food and other supplies, as well as compensation payments for services.

B.2 CONSIDERATION

a. Capital and Fixed Contributions

UMW required the Contractor to assume the unamortized balance from the previous contract in the amount of \$1,118,980.00. Sodexo shall amortize the unamortized remaining balance from the prior contract on a straight-line basis over ten (10) years, commencing August 1, 2012. Such amortization shall be charged as an operating expense of the Food Service operation. Once the investment is fully amortized, July 30, 2022, UMW shall own the investment from the prior contract excluding proprietary equipment and signage utilized in the Branded Concepts operation.

Sodexo shall provide a year-to-date accounting of the status of the amortization which shall be included in the required monthly financial reporting.

If prior to the complete amortization of the Investment any of the following events should occur:

- i. The Agreement expires;
- ii. The Agreement is terminated;
- iii. Sodexo's procurement programs are no longer utilized for the purchase of goods in connection with the Services provided under this Agreement;

Then UMW shall reimburse Sodexo, within ninety (90) days of receipt of invoice, the unamortized portion of the Investment.

Sodexo Investment #1: On or about August 1, 2015, Sodexo shall provide an amount equal to One Million Dollars (\$1,000,000.00) ("Investment #1"). Sodexo shall amortize "Investment #1" on a straight-line basis over eight (8) years, commencing August 1, 2015. Such amortization shall be charged as an operating expense of the Food Service operation. Once fully amortized, July 30, 2023, UMW shall own Investment #1, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

Sodexo shall provide a year-to-date accounting of the status of the amortization which shall be included in the required monthly financial reporting.

If prior to the complete amortization of Investment #1 any of the following events occur:

- i. the Agreement expires;
- ii. the Agreement is terminated;
- iii. iii Sodexo's procurement programs are no longer utilized for the purchase of goods in connection with the Services provided under this Agreement;

Then, UMW shall reimburse Sodexo ninety (90) days after receipt of invoice for the unamortized portion of Investment #1.

Sodexo Investment #2: On or about August 1, 2016, Sodexo shall provide an amount equal to Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00) ("Investment #2"). Sodexo shall amortize Investment #1 on a straight-line basis over seven (7) years, commencing August 1, 2016. Such amortization shall be charged as an operating expense of the Food Service operation. Once fully amortized, July 30, 2023, UMW shall own Investment #2, excluding proprietary equipment and signage utilized in the Branded Concepts operation.

Sodexo shall provide a year-to-date accounting of the status of the amortization which shall be included in the required monthly financial reporting.

If prior to the complete amortization of Investment #2 any of the following events occur:

- i. the Agreement expires;
- ii. the Agreement is terminated;
- iii. Sodexo's procurement programs are no longer utilized for the purchase of goods in connection with the Services provided under this Agreement;

Then, UMW shall reimburse Sodexo ninety (90) days after receipt of invoice for the unamortized portion of Investment #2.

b. Fixed Contributions

Commencing with the execution of this Agreement, and provided that the Agreement is renewed each year, Sodexo shall provide to UMW the following Fixed Contributions in accordance with the schedule below:

<u>Date of Contribution</u>	<u>Contribution Amount</u>
Year 1 – upon initiation of contract	\$500,000.00 fixed payment
Year 2 – August 1, 2013	\$400,000.00 fixed payment
Year 3 – August 1, 2014	\$300,000.00 fixed payment
Year 5 – August 1, 2016	\$300,000.00 fixed payment

original
capital

Sodexo shall amortize each Fixed Contribution on a straight line basis over fifty two (52) weeks, commencing on August 1st of each academic year in which the Fixed Contribution is provided. In the event the Agreement is terminated prior to the completion of any academic year, UMW shall reimburse Sodexo ninety (90) days after receipt of invoice for the unamortized portion of the Fixed Contribution for that year and Sodexo will have no further obligation under this Section.

The Fixed Contributions shall be provided to the University in the form of a check payable to the University or may be requested via ACH wire transfer and shall be due on the dates outlined above.

The investment allocation shall be used for dining renovation and enhancement and will be held by Sodexo, and used in dining service improvements, as directed and approved in writing by the University prior to committing funds. Sodexo shall provide the University evidence of expenditures through contractor invoices, or other accepted documentation. Sodexo's investment (the "Investment") shall be amortized over the period stated above, using straight-line method of depreciation. Sodexo will provide a year-to-date report of such expenditures on January 20 of each contract year and a final reconciliation including a breakdown of equipment purchases prior to expiration of contract.

Should either party terminate this agreement, without due cause, or should this Agreement expire, prior to the complete amortization of the Investment, the University will reimburse Sodexo for the unamortized balance of the Investment, as of the date of termination or expiration ninety (90) days after receipt of acceptable invoice.

c. Other Contributions

Upon execution of contract, and on August 1 of each subsequent contract year, Sodexo shall make payment to the University in amounts no less than those designated below. Checks shall be delivered to the University's Contract Administrator.

d. Commitments of Support

Student Activities	\$2,500.00
System access fees and licensing (Blackboard)-	\$5,000.00
Trash removal and/or composting	\$9,600.00
Scholarship Contribution*	\$10,000.00
Athletics	\$500.00
Presidential Catering Fund	\$15,000.00
Other Contributions:	
Friends Groups	\$2,500.00
Great Lives	\$2,500.00

*Sodexo shall break out a separate check for the scholarship fund which shall be made payable to University of Mary Washington Foundation.

e. Commissions.

In consideration of the rights granted by the University hereunder, Sodexo shall pay UMW fifteen percent (15%) commission on internal catering, cash sales, commissions and sales using flex dollars, external (non-university) catering commission shall be fifteen percent (15%). All commissions are based on Net Sales. Net Sales shall be defined as gross sales less applicable state and local sales tax. Sodexo hereby guarantees the University an annual commission as follows, to be paid by June 15th of each contract year.

Year 1 – 3	\$400,000.00
Year 4 - 5	\$425,000.00
Year 6 - 10	\$450,000.00

If total commissions are greater than the guaranteed amount during each contract year, Sodexo shall pay the University the difference between the guarantee and the actual earned commissions. Such payment shall be made no later than September 1, of each contract term.

f. Compensation:

- I. For the University's fiscal year 2012-2013, the total amount of gross compensation ("Compensation") from all sources received or retained by Sodexo pursuant to this Agreement shall not be less than \$3,907,063.00 ("Fixed Compensation") and shall not exceed \$7,814,126.00 ("Maximum Compensation"), subject in each case to adjustment as provided in Section B.7. If the total Compensation received or retained by Sodexo for any year under the Agreement is less than Fixed Compensation for that year, Client shall pay the amount of any such shortfall to Sodexo within [30] days of the end of such year, and if the total Compensation received or retained by Sodexo for any year under the Agreement is more than Maximum Compensation for that year, Sodexo shall refund the amount of any such excess to the Client within [30] days of the end of such year. For internal accounting purposes only, the rates used to calculate Fixed Compensation shall be as set forth in this Agreement.
- II. Subsequent Years. The Parties shall agree in writing on the total Fixed Compensation to this Agreement for the 2013-2014 contract year and for subsequent years during the term of this Agreement, prorated in the event of early termination of this Agreement. If the parties are unable to agree on Fixed Compensation for any such year the Agreement shall terminate. Maximum Compensation shall always equal 200% of Fixed Compensation. The parties agree that this Agreement, and any negotiated compensation for future fiscal years must satisfy the requirements of Revenue Procedure 97-13 or successor authority and the provisions of this Agreement shall be interpreted in a manner consistent with such intent.

g. Contract Security:

In lieu of the performance bond, each year of the contract, and in any subsequent renewal years, Sodexo shall establish a \$29,700.00 fund for enhancements/renovations to the dining service. Designated renovations shall be in written form, and mutually agreed upon between the University and Sodexo. Sodexo shall provide evidence to the University of expenditures through contractor invoices, or other accepted documentation. Unspent balances in the fund will be carried over from year to year and

will not serve to decrease the annual investment of \$29,700.00. Unused balances at the termination of the contract shall be paid to the University. Sodexo will provide the University with a year-to-date report of such expenditures by January 30 of each contract year and a final reconciliation for the contract year by September 1.

h. Catering:

Presidential Catering- Sodexo shall establish a \$15,000.00 Presidential Catering Fund, each year of the Agreement. The fund will be replenished August 1, of each contract term. Expenditures from this fund will be non-commissionable and based on published retail catering prices. Evidence of expenditures from this fund shall be provided to the Contractor Administrator and the President's Office as expenses are incurred

B.3 RETAIL OPERATION AND PRICING

a. Retail Prices

The retail prices shall be mutually agreed upon by the parties.

b. Branded Concepts

Sodexo shall operate the Branded Concepts at UMW'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.

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

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.

Sodexo shall be responsible to UMW for recommendations regarding the viability of Branded Concepts at the beginning of each academic semester (fall and spring) via submission in writing to be included with the required financial reports (August and January). These recommendations shall be based upon summarized financial data associated with sales at said operations.

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

As of commencement of the Agreement, Sodexo shall operate or cause to be operated the following Branded Concepts:

1. WOW Cafe & Wingery
2. Jazzman's
3. Subway (anticipated/under review)

c. Subcontract

By mutual agreement of the parties, Sodexo shall subcontract to Vocelli's for retail operations.

d. Early Termination Penalty

UMW understands that certain Branded Concepts and/or Subcontracts will assess an early termination fee. Sodexo shall notify UMW at the time of contract renewal of any termination or expiration of a license or franchise agreement related to a Branded Concept that is due to occur during the contract term. Sodexo shall also be responsible, at this time, for providing to UMW the current amount of any early termination fee for any Branded Concept.

In the event that by mutual agreement, and based upon recommendations from Sodexo, the Branded Concept operation is discontinued prior to the termination date, it is understood that the current termination penalty shall be payable by Sodexo.

e. Cash Operations Pricing

All prices for cash operations are subject to mutual agreement between the Contractor and the Contract Administrator.

f. PCI Compliance

Contractor represents and warrants that for the life of the contract and/or while Contractor has possession of University customer cardholder data, the software and services used for processing transactions shall be compliant with standards established by the Payment Card Industry (PCI) Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). In the case of a third-party application, the application will be listed as PA-DSS compliant at the time of implementation by the vendor or University. Contractor acknowledges and agrees that it is responsible for the security of all cardholder data. Contractor agrees to indemnify and hold University, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of University customer credit card or identity information managed, retained or maintained by Contractor, including but not limited to fraudulent or unapproved use of such credit card or identity information. Contractor shall, upon written request, furnish proof of compliance (certified by a PCI Qualified Security Assessor (QSA)) within 10 business days of the request. Contractor agrees that, notwithstanding anything to the contrary in the Agreement or the Addendum, the University may terminate the Agreement immediately without penalty upon notice to the Contractor in the event Contractor fails to maintain compliance with the PCI DSS or fails to maintain the confidentiality of any cardholder data.

B.5 INVOICES

All invoices shall be rendered in accordance with this Agreement. No invoice may include any costs other than those identified in this Agreement. Invoices shall provide at a minimum:

1. Student participation by meal plan
2. Agreed upon rates
3. Contractor's Federal Identification Number (FIN).
4. Contract Number
5. Documentation of detail supporting all invoice totals

B.6 ACCOUNTING

a. Board Plan Identification

The University agrees to provide Sodexo with a file of all students who are enrolled in the Board Plan(s). The University will promptly notify Sodexo of any additions or deletions on a weekly basis.

b. Board Plan Billing/Payment Terms

At the end of each week, Sodexo will bill University for all enrolled board plan participants and for all flex dollars spent. The University will pay Sodexo within thirty (30) days from the date of an approved invoice. Any Flex balances remaining at the conclusion of the first semester will be rolled-over to the second semester. If the capture rate on potential Flex exceeds Ninety percent (90%), then One hundred percent (100%) of all Flex balances remaining at the conclusion of the academic year will be payable to Sodexo. If the capture rate on potential Flex is less than Ninety percent (90%), then One Hundred percent (100%) of the balance above Ninety percent (90%) will be payable to Sodexo, and Fifty Percent (50%) of the balance below Ninety percent (90%) will be payable to Sodexo.

c. Inventory

i. Food and Supplies

Sodexo will maintain ownership of the entire inventory of food and supplies purchased by Sodexo, on their behalf, for use at UMW. Should either party terminate this Agreement, the University reserves the option to purchase, or request the successor dining service contractor to purchase, the entire inventory of food and supplies at a price to be mutually agreed upon between the parties. Inventory purchased through Sodexo on behalf of the University, as outlined in Sections B.2.a, B.2.c, and B.2.d herein, shall be documented in writing prior to purchase, and such food and supplies will remain property of the University upon payment of any unamortized amount due to Sodexo.

ii. Operating Dishwares:

The University and Sodexo will jointly agree upon the base level on-hand operating inventory at the initiation of the contract. Sodexo agrees to maintain that inventory at the same level throughout the term of the contract.

d. Sustainability

Sodexo shall provide the University with mutually agreed upon quarterly benchmark reports to illustrate the results of sustainable measures within the dining operation.

Results of sustainable actions shall be shared with the University to be included in overall university performance statistics.

B.7 PRICE ADJUSTMENTS

The University, may in its sole discretion, upon written request from the Contractor, filed no later than November 1 of each calendar year, permit University approved price adjustments to become effective upon the contract anniversary date.

Any request for a rate increase must be accompanied by sufficient documentary evidence presented by the Contractor that it has experienced cost increases during the preceding year due to wages, taxes, fuel, and/or general inflation. Any price increase request shall be made in writing, together with the required supporting documentation which may include the following applicable inflation indices: PPI Finished Consumer Foods and PPI Processed Foods averaged; Employment Cost Index, Total Benefits, Private Industry; and CPI-U, All Items, Washington D.C./VA for the latest 12-month period available, as

well as other mutually agreed business decisions impacting cost, and submitted to the University Contract Administrator. The University will notify the Contractor in the form of a contract modification, of any increase which it may thereafter approve. This will enable the University to inform students and parents of the subsequent year's board prices.

By mutual agreement of both parties, the financial agreement may be adjusted to reflect additional costs incurred by Sodexo 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 increases in benefit costs paid by Sodexo on behalf of covered employees.

SECTION C – ADDITIONAL CONTRACT TERMS

C.1 AMENDMENT AND WAIVER

No amendment of this Agreement shall be effective unless it is in writing and signed by a duly-authorized representative of each party. Under no circumstance shall any term or condition on or in any invoice, package, license or other Contractor-supplied document be effective unless such term or condition is in this Agreement or in any Contract Modification or is signed by the University's duly-authorized representative. All modifications (amendments) to the contract shall be issued by the University's contract officer.

C.2 ASSIGNMENT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the University's written consent, and that any purported assignment or transfer without such consent, which consent shall not be unreasonably withheld, shall be null and void, except Contractor may with prior University approval and without being released from any of its responsibilities hereunder, assign the Agreement to any affiliate or wholly owned subsidiary of Sodexo. To the extent applicable law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be determined in accordance with applicable law.

In the event that the University receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty (30) days after the University's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The University shall promptly notify the Contractor of any assignment notice it receives.

C.3 CONTRACTUAL RECORDS

The Contractor shall make all contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five (5) years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed orders, attachments, modifications, invoices, and correspondence between the parties to this Agreement.

C.4 CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual Claims, whether for money or other relief, shall be submitted in writing to the University later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The University shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 11-71 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within one (1) month of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

C.5 NON-APPROPRIATION

This Agreement for Services and all payment obligations are subject to appropriated funds being available for expenditure for that purpose. The Commonwealth shall promptly notify the Contractor of any action denying such funding. In such event, this Agreement shall be canceled without further obligation to the extent the affected Services has not yet been provided

C.6 TERMINATION

The University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. After the first year, either party may terminate this Agreement by giving the other party sixty (60) days written notice; however, Sodexo may only terminate this Agreement at the end of a semester.

C.7 CONDITION OF PREMISES AND EQUIPMENT

The Premises and equipment provided by the University for use in the Food Service operation shall be in good condition and maintained by the University to ensure compliance with applicable laws concerning building conditions, (including, without limitation, OSHA regulations). University further 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 and expense of the University.

C.8 TRADE SECRETS AND PROPRIETARY INFORMATION

During the term of the Agreement, Sodexo may grant to UMW a nonexclusive right to access certain proprietary materials of Sodexo, including recipes, signage, Food Service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed to Sodexo), computerized data bases and similar compilations and documents regularly used in Sodexo's business operations ("Trade Secrets"). The University shall not disclose any of Sodexo's expressly stated Trade Secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. The University shall not photocopy or otherwise duplicate any such material without the prior written consent of Sodexo. All expressly identified Trade Secrets (including all signage proprietary to Sodexo) and other confidential information shall remain the exclusive property of Sodexo and shall be returned to Sodexo immediately upon termination of the Agreement. Without limiting the foregoing, UMW 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 UMW. Furthermore, the University's access or use of such software shall not create any right, title interest, or copyright in such software, and UMW shall not retain such software beyond the termination of the Agreement. "Notwithstanding the foregoing, nothing in this section or the Agreement shall be deemed to require the University to refuse to disclose or otherwise seek to protect any information that is subject to the mandatory disclosure requirements of the Virginia Freedom of Information Act, §§ 2.2-3700 *et seq.*, of the Code of Virginia (1950), as amended."

C.9 ANNUAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit annually, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value. A suggested format is as follows:

FIRM NAME,				
ADDRESS AND	TYPE GOODS./	ACTUAL PLANNED	% OF TOTAL	
PHONE NUMBER	SERVICES	DOLLARS	DOLLARS	CONTRACT

Totals for Business Class _____

C.10 TAXES

Sodexo and University 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 University. If additional sales or use or any other types of taxes are assessed against the Food Service operation, Sodexo shall notify University immediately of any such assessment and the parties shall work together to challenge any such assessment. Responsibility for payment of any interest, penalties, attorneys' fees or other costs incurred in the challenge of such assessment shall be mutually agreed upon by the parties.

However, Sodexo shall not be responsible for those expenses incurred as a result of any unreasonable delay on University's part in responding to such assessment.

The University shall not be responsible for any assessment attributable to Sodexo's negligent failure to timely submit any known tax filing or report.

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.

C.11 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

C.12 INSURANCE AND INDEMNITY

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 UMW 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. UMW shall be named as an additional insured under Sodexo's policies of insurance.
- c. Property Insurance: UMW will 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, and all property contained therein insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance.
- d. Except as otherwise expressly provided in this Agreement, Sodexo shall defend, indemnify, and hold Client harmless from and against all claims, liability, loss and expenses, including reasonable costs, collection expenses and attorney's fees incurred, to the extent arising from the negligent acts or omissions of Sodexo, its agents or employees in the performance of its obligations under this Agreement. This provision shall not extend to the liability of UMW arising from its own acts of negligence or omissions. Notwithstanding the foregoing, with respect to property damage, for which the parties maintain a system of coverage on their respective property, each party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other party hereto and its subsidiaries and affiliates for loss or damage to such party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard broad form property insurance policies. This clause shall survive termination of the Agreement.

C.13 PAYMENT FOR PARTIAL WEEKS OF SERVICE

The following formula shall be used to establish pro-rated board payment during partial weeks of service:

For each partial day, when they occur, the University pays 1/3 for one meal, and 2/3 for two meals.

C.14 OPERATING STATEMENTS

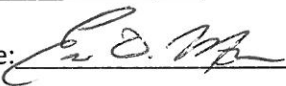
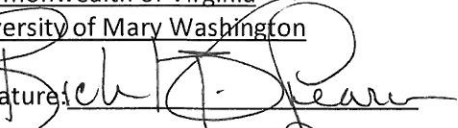
Sodexo shall submit operating statements to Client for each month within 15 days of month end and maintain books and records in accordance with generally accepted accounting principles. The operating statements submitted by Sodexo may reflect certain internal charges and allocations which are applied on a consistent basis to Sodexo Campus Services accounts including, but not limited to, a Charge for management benefits and a General Support Services Allowance equal to Five percent (5%) of Net Sales. Client, at its expense, reserves the right to audit all operating statements.

Any position open beyond 60 days from the date of management departure from UMW will subject Sodexo to reimburse the University for the Cost of that positions' straight salary through a weekly credit on the board bill until such time as the open position has been filled. "Filled" being defined as the first day the new manager is on the Sodexo payroll and at the UMW campus. Including but not limited to:

- | | |
|--------------------------------------|--------------------------|
| 1. General Manager | 7. Director of Retail |
| 2. Executive Chef | 8. Retail Manager 1 |
| 3. Executive Catering Chef Seacobeck | 9. Retail Manager 2 |
| 4. Director of Resident Dining | 10. Director of Catering |
| 5. Resident Dining Manager | 11. Catering Manager |
| 6. Marketing Manager | |

In the event Sodexo has made appropriate interim arrangements to replace an open position, e.g., Sodexo may spend 6 months on search for a general manager but have an interim GM with the appropriate experience dedicated to the campus during that time frame, then, the penalty would not apply. Both parties also acknowledge that exceptions may be mutually agreed to as applicable to business conditions.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

CONTRACTORSODEXO OPERATIONS, LLCSignature: Name: Ernie D. MinorTitle: SVP, OperationsDate: 11/7/2012AGENCYCommonwealth of VirginiaUniversity of Mary WashingtonSignature: Name: Richard R. PearceTitle: V.P. Adm. + FinDate: 11/13/12