

**Santa Rosa County
School District**



"A Tradition of Excellence"

Judson C. Crane
CPPO, CPPB

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May 22, 2014

Mr. Tim Wyrosdick
Superintendent of Schools
5086 Canal Street
Milton, Florida 32570-6707

Dear Mr. Wyrosdick:

Please find enclosed the final draft of the Food Service Management Company contract resulting from RFP-14-01, awarded to Sodexo. The contract is a result of negotiations with Sodexo and has been approved by the Food and Nutrition Office, Florida Department of Agriculture.

Board approval of this contract is recommended.

Sincerely,



Judson C. Crane

JCC/rg

Attached: 1

DISTRICT 1
Diane Scott

DISTRICT 2
E. Hugh Winkles

DISTRICT 3
Diane Coleman

DISTRICT 4
Jennifer Granse

DISTRICT 5
Scott Peden

AGREEMENT BETWEEN THE SANTA ROSA COUNTY SCHOOL DISTRICT AND SODEXO AMERICA LLC.

This Agreement is made and entered into effective July 1, 2014 (the "Effective Date"), and is by and between The Santa Rosa County School District, Florida, operating a district school system in the State of Florida (the "District"), and Sodexo America LLC., a Delaware single member limited liability company authorized to transact business in Florida, and d/b/a Sodexo School Services, (the "Contractor").

WITNESSETH:

WHEREAS, the District issued RFP 14-01 dated on or about December 19, 2013, relating to food service department management and operation (fixed price format), the "RFP", a copy of which RFP is attached hereto and incorporated herein by this reference as Exhibit A;

Whereas, after free and open advertised solicitation, Contractor submitted a proposal (attached hereto and incorporated herein by this reference as Exhibit B), and was selected as the best responsive and responsible Contractor by the District (the "Proposal");

Whereas, the Contractor is interested in and capable of performing the desired food service department management and operation services (hereafter further defined as the "Services") for the District and the District desires to have the Contractor perform the Services; and

Whereas, the parties have negotiated Contractor's Proposal as permitted by the RFP, and reached an agreement on the Services to be performed and the payment for the same, and therefore wish to set forth this understanding in writing in this Agreement.

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

ARTICLE I SCOPE OF SERVICES

1.1 The recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

1.2 The parties agree that the purpose of this Agreement is that the Contractor shall fully, timely, and continuously provide the District the Services in a manner in accordance with the District's objectives set forth in the RFP and this Agreement. The contract documents consist of this Agreement, the RFP, and the Proposal. In the event of any conflict or ambiguity among these documents, the following priority shall be assigned: first to this Agreement, next to the RFP, and lastly to the Proposal.

1.3 The Services shall also specifically include the District's Summer Food Service Program under the contracted per meal price at the locations specified in the RFP. Notwithstanding anything to the contrary, the commencement of the Summer Food Service Program shall be June, 2014, as set forth in the RFP.

1.4 If any services, functions or responsibilities not specifically described in this RFP are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein.

1.5 With respect to any Services not specifically provided in the RFP or this Agreement ("Additional Services"), the District reserves the right to engage third parties to provide these Additional

Services. However, the Contractor may agree to provide these Additional Services at a fair and negotiated price upon the District's request, provided they do not constitute a material change from the RFP.

1.6 The Contractor is, and shall at all times be, an independent contractor under this Agreement and not an agent of the District. Nothing in this Agreement nor any actions taken by or arrangements entered into between the parties in accordance with the provisions of this Agreement shall be construed as or deemed to create as to the parties any partnership or joint venture. Neither party shall have any authority to bind or commit the other party contractually or otherwise to any obligations whatsoever to third parties.

1.7 Non Commodity Inventories of Food, Beverages, and Supplies. Sodexo shall own inventories of food, beverages, goods, merchandise and supplies on record as of June 30, 2014. At the end of the Contract or upon termination, Sodexo and District shall jointly take a closing inventory of all such food and supplies. The value of the inventories shall be determined by invoice prices. At the expiration of this contract, the district shall reimburse Sodexo for the value of the closing inventory upon mutual agreement or Sodexo shall remove the inventory.

1.8 Rebates: All goods, services or monies received as the result of a rebate under a processing Contract must be credited to the District's account for the value of donated foods contained in processed end products. 7 CFR 250.51

1.9 The value of commodities received must be itemized in the regular monthly billing to the SFA as a credit savings resulting from commodity received. The values are to be based on the value of the product at the point the SFA receives the commodity at each site and on USDA prices pertinent to that time period. Sodexo will make every effort to utilize the full commodity allotment provided.

1.10 Condition of Premises and Equipment. The Premises and equipment which is not covered under the food service equipment maintenance contract but provided by District for use in the Food Service operation shall be in good condition and maintained by District to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health (including, without limitation, OSHA regulations). District agrees to be responsible for any liability or assessment, including related interest and penalties, arising from District's breach of the aforementioned obligations, and District shall pay reasonable collection expenses, attorneys' fees and court costs incurred in connection with the enforcement of such responsibilities. District 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 District and shall be at the District's expense. This provision shall survive the termination of this Agreement.

1.11 The contractor will fund up to \$147,000.00 of certain non-proprietary improvements to the District locations to facilitate the performance of the Services ("the investment") within the initial 1 year term of the Agreement. The scope and specifications for such improvements shall be mutually agreed to in writing by the parties prior to the implementation of the improvements or disbursement of any Investment funds. The Investment shall be amortized over a period of five years, ending June 30, 2019, calculated on a straight-line, no-interest, depreciation basis. The District shall hold title (free and clear of any liens or encumbrances) funded by the Investment at the time of purchase of the same. If this Agreement is terminated or not renewed prior to the full amortization of the Investment, then the District shall select one of the following options: (i) pay the Contractor the full amount of the remaining unamortized portion of the Investment within forty-five (45) days after the termination or nonrenewal; (ii) retain any equipment or other items paid with the Investment funds and continue to pay the Contractor in accordance with the amortization schedule; or (iii) require the successor food service management company to either pay the Contractor the unamortized portion of the Investment in full within forty-five (45) days or otherwise continue to pay the Contractor in accordance with the amortization schedule.

ARTICLE II COMMENCEMENT AND RENEWAL

2.1 See page 11, "Terms and Termination," paragraph 1, of the RFP.

2.2 The District shall send written notice to the Contractor regarding the District's election to renew/not renew this Agreement for another Agreement Year on or before April 15 of the then current Agreement Year. The Contractor agrees to provide written notice to the District within ten (10) business days of its receipt of the District's renewal notice, or within ten (10) business days after April 15 of any Agreement Year if the District fails to timely provide such renewal notice, if the Contractor does not intend to renew the Agreement for the next Agreement Year.

2.3 In order to provide transition assistance to the District in the event that this Agreement is terminated or expires, the Contractor agrees that the District may provide written notice to the Contractor retaining the Contractor for a minimum of one calendar month, and on a month-to-month basis for a period not to exceed six months, on the same terms and conditions set forth in this Agreement. However, the compensation to be paid to the Contractor during this period shall be 100% of the prior Fixed Meal Price (the "Transition Assistance"). The provisions of this section will not apply if this Agreement is terminated by the Contractor based on an uncured event of default by the District (in which event the Contractor reserves all rights at law).

2.4 Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement, including those provisions relating to the obligations of Contractor in connection with the Transition Assistance, shall survive any termination or expiration of this Agreement and continue in full force and effect.

2.5 Except for those actions preceding the date of this Agreement, the Services shall commence according to the schedule set forth in the RFP, unless the District notifies the Contractor otherwise in writing.

ARTICLE III COMPENSATION

3.1 The total Fixed Price per Meal for Agreement Year 1, shall be \$2.982. If the Agreement is renewed thereafter, then the adjustment to the Fixed Price per Meal shall be the sum of the following for the applicable renewal year: Consumer Price Index for Food Away From Home as of the month of December of the current year.

3.2 Notwithstanding anything set forth herein, and excepting only any material force majeure event or material matter outside of the control of the Contractor, in no event shall the Fixed Price per Meal, or any annual adjustment thereto described above, result in the Contractor not meeting its guarantee of producing a positive fund balance. The contractor Guarantees that the return to the SFA from the Food Service Program for the 2014-2015 school year will be Seven Hundred Thousand Dollars (\$700,000). If the annual operating statement shows a client return less than \$700,000, then the contractor will reimburse the SFA up to the guaranteed amount. The Guaranteed Return is based on district revenue minus the Fixed Price times Billable Meals.

3.3 During the term of the Agreement, the following provisions shall be applicable to the effect of District employee attrition. As District employee attrition occurs, these employees may be replaced by Contractor employees. If there is a salary difference of plus or minus five percent (5%), or if the Contractor does not hire an employee to replace the District's attrited employee, then the amount of the difference (whether above or below the 5% threshold, or whether 100% for the non-replacement/vacancy) will be credited 50/50 to the District and Contractor. The credit to the District shall occur the month after the District employee attrites, and the parties shall complete the annual reconciliation within sixty (60) days after the end of each Agreement year.

3.4 The maximum obligated amount under this Agreement shall be as set forth in the contract documents; in no event shall the District be responsible to the Contractor for compensation in excess of the maximum obligated amounts stated in this Agreement except as increased by formal approved and executed supplemental agreement(s).

3.5 Unreserved Fund Balance: District and Sodexo shall work together to ensure a financially sound operation for the 2014-2015 school year. Both parties will work to ensure compliance with District's Strategic Plan. Sodexo guarantees the District will not financially subsidize the food service operation. In the event of a financial subsidy from the General Fund, Sodexo will reimburse the District up to the amount of five percent (5%) of the Unreserved Fund balance.

3.6 Financial terms of the Agreement are based upon existing conditions and the following assumptions. If there is a change in conditions, including, without limitation, changes to the following assumptions, the financial terms of the Agreement, including the Fund Balance Guarantee, shall be adjusted to compensate for such change.

- Sodexo and District shall mutually agree upon all debits and credits to the Fund Balance.
- Changes in District's policies, practices, and service requirements shall result in an appropriate adjustment.
- Average daily attendance ("ada") for the contract year beginning July 1, 2014 shall not be less than twenty four thousand six hundred sixty eight (24,668).
- Legislation, regulations and reimbursement rates that create changes in the school lunch program shall remain consistent throughout the year.
- The government reimbursement rates in effect as of July 1, 2014 shall remain consistent throughout the year.
- Changes to meal components and quantities required by the National School Lunch Act or the National School Lunch Program.
- There shall be no competitive sales during the lunch period per school board policy.
- Service hours, service requirements type or number of facilities selling food and/or beverages on District's Premises shall remain consistent throughout the year.
- The state or federal minimum wage rate and taxes in effect as of July 1, 2014 shall not be less than consistent throughout the year.
- The projected number of full feeding days shall not be less than one hundred eighty (180) for elementary and middle and one hundred eighty (180) for high school.

3.7 Program Expenses. District costs charged to the Food Service Program accounts below shall not exceed the following:

District Labor Costs and Benefits	\$644,391.00
Other District Purchases	\$165,500.00
Indirect Costs	\$154,000.00

3.8 Initial Payment. Contractor shall provide a change fund at the beginning of each school year equal to Three Thousand Five Hundred Dollars (\$3,500) at the end of the school year, the funds will be returned to Contractor.

3.9 Scholarship. For every year that this Agreement is in effect, Sodexo shall provide to District at the

end of each school year a scholarship fund in the amount of Thirteen Thousand Dollars (\$13,000.00). District shall be responsible for determining the student(s) to receive the scholarship(s). If the Agreement is terminated for any reason, Sodexo shall have no future obligation as it relates to this Section 3.9.

**ARTICLE IV
TERMINATION**

This Agreement may be terminated as set forth in the RFP.

**ARTICLE V
MEETINGS; REPORTS; NOTICES**

5.1 The parties agree that all communications relating to the day-to-day activities shall be exchanged between the respective representatives of the District and the Contractor, which representatives shall be designated by the parties, in writing, promptly upon commencement of the Services.

5.2 The Contractor and the District agree to meet monthly at a time and place to be determined (the "Executive Monthly Joint Review") to review the Contractor's performance of the Services and generally to review the results of operations under this Agreement. The District and the Contractor will agree upon the formats for desired reports, and the Contractor will provide the reports at a frequency and in a format mutually agreed upon by the parties.

5.3 The Contractor shall fully cooperate with the District as to all matters pertaining to any and all legal, audit, and compliance requirements relating to the Services and the contract documents, to render compliance with all requirements of law. Notwithstanding any Contractor claims of trade secrets, proprietary or confidential information, the Contractor shall disclose to the District any and all information necessary for the District to ensure compliance with legal, audit, and compliance requirements so the District maintains full reimbursement and approvals from jurisdictional agencies.

5.4 District and Sodexo agree to participate in a Common Goals Session within sixty (60) days of the commencement of Services in accordance with Exhibit B. During the second half of each school year, District and Sodexo agree to participate in an Annual Expectations Meeting throughout the term of this Agreement.

Sodexo shall present no less than bi-annually a verbal and written program update to the School Board.

5.5 All formal notices and communications in writing required or permitted hereunder may be delivered via overnight delivery, or pre-paid certified mail, return receipt requested, to the representatives of the District and the Contractor set forth below. Until changed by notice in writing, all such notices and communications shall be addressed as follows:

If to the District: Santa Rosa County School District
Attn: Jud Crane, Director of Purchasing and Contract Administration
6544 Firehouse Road
Milton, Florida 32570-3411

If to the Contractor: Sodexo America LLC.
Attn: Scott Loretan, Senior Vice President
10400 Little Patuxent Parkway, Suite 490
Columbia, MD 21044

With copy to: Sodexo America, LLC
Attn: Law Department
9801 Washingtonian Boulevard
Gaithersburg, MD 20878

ARTICLE VI PERSONNEL

6.1 The Contractor represents and warrants that its performance of the Services shall be rendered with promptness and diligence and shall be executed in a workman-like manner, in accordance with the practices and high professional standards used in a well-managed operation performing services similar to the Services. The Contractor represents and warrants it will use an adequate number of qualified individuals with suitable training, education, experience, and skill necessary to perform the Services and the Contractor represents and warrants it will perform the Services in an efficient and cost-effective manner.

6.2 The Contractor agrees and represents that all of the Services required hereunder shall be performed by the Contractor as identified in the RFP and Proposal.

6.3 All the personnel assigned by the Contractor and any subcontractor shall be authorized under state and local laws to perform such Services, whether by appropriate license, registration, certification or other authorization.

6.4 The Contractor agrees that it will remove (within a mutually agreed upon period of time) from assignment under this Agreement any individual in its employ, if, after the matter has been reviewed jointly by the District and the Contractor, the District requests such action in writing. Any such removal shall not necessarily reflect on the capabilities or competence of the individual so removed. Nothing herein shall affect the status or responsibilities of the Contractor as an independent contractor solely responsible for the method, manner and means chosen by it to perform hereunder.

6.5 The parties acknowledge that each has invested considerable time and money in training its highly compensated supervisory employees in the systems, procedures, methods, forms, reports, formulas, computer programs, plans, techniques, and other valuable information that are proprietary and unique to each party's manner of conducting its business, and such information is available to each party's respective highly compensated supervisory employees. Therefore, the parties agree that such supervisory employees of each party will not be solicited for hire, hired, or contracted by the other party for the term of this Agreement and 12 months thereafter. For purposes of this section, the term "highly compensated supervisory employees" shall mean those persons who have directly or indirectly performed management or professional services relating to the Services at the District premises, and shall not include civil service employees, cafeteria managers, former employees of either party who were separated from that prior service by at least one year, or such specific person as released from this restrictive covenant by both parties. If either party breaches this covenant, then the breaching party shall pay the non-breaching party (as liquidated damages and not as a penalty) an amount equal to the last annual salary (without regard to bonuses or other benefits) of the supervisory employee hired by or allowed to work in violation of this section. Notwithstanding the foregoing, this covenant shall supersede any employment contract between Contractor and any of its supervisory employees.

6.6 Equal Opportunity and Affirmative Action Employer. Sodexo is an equal opportunity employer and is legally responsible for all of its employment decisions affecting its own employees, which include thousands of extremely talented and diverse managers. As such, Sodexo will not comply with any type of unlawfully discriminatory request or preference by anyone that restricts the opportunities of its workforce. 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 or any other basis prohibited by law, including, but not limited to religion, sex, age, national origin, disability or Vietnam Veteran status. This obligation applies to the recruitment, selection, training, utilization, promotion, termination or other employment-related activities concerning Sodexo's employees. Under no circumstances will Sodexo 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 and shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, Executive Order 11246, as amended by 11375 and 12086; 12138, as amended by 12608; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the 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 VII NUTRITION

7.1 The Contractor shall use its best efforts to provide quality nutritious Meals and a la Carte items, and shall collaborate with third party local nutrition committee(s) concerning the review of menus and menu development and such other related actions to deliver the Services. In addition to the foregoing, the Contractor and District agree to create a "nutrition development council" consisting of parents (preferably one parent from each board member district within the District), Contractor personnel, and District personnel, to review nutritional standards and menus for the district.

7.2 Branded Concepts. Sodexo shall operate the Branded Concepts at District's Premises under the conditions set forth below and with approval of SFA. '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 District twenty (20) days in advance of any termination or expiration of a license or franchise agreement related to a Branded Concept. Sodexo and District 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. Café Ala Carte

7.3 Trade Secrets and Proprietary Information. During the term of the Agreement, Sodexo may grant to District 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, District 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 District), or (ii) any information which was available to District 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.

District 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. District 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, District specifically agrees that all proprietary 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 District. Furthermore, District's access or use of such software shall not create any right, title interest, or copyright in such software, and District 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.

ARTICLE VIII MISCELLANEOUS

8.1 The Contractor warrants that it is a legal entity duly organized and existing in good standing and is entitled and shall remain licensed to carry on its business as required for its performance pursuant to this Agreement in the State of Florida. The Contractor agrees that it will comply with all laws, rules and regulations of governmental bodies governing its performance under this Agreement whether or not such specified in this Agreement. The Contractor further warrants that the execution and delivery of this Agreement and the terms and conditions herein have been duly authorized by proper corporate action.

8.2 Failure by either party to insist upon strict performance of any of the provisions hereof or failure or delay by either party in exercising any rights or remedies provided herein or by law, the District's payment in whole or in part for services hereunder or any purported oral modification or rescission of this Agreement by an employee or agent of either party shall not release either party of any of its obligations hereunder, shall not be deemed a waiver of the rights of either party to insist upon strict performance hereof or of any of either party's rights or remedies under this Agreement or by law and shall not operate as a waiver of any of the provisions hereof. A waiver by either of the Parties of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant in this Agreement. Except as otherwise expressly provided in this Agreement, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

8.3 This Agreement may not be amended or supplemented in any way except in writing, dated and signed by the Superintendent of the District's Board following a properly authorized Board meeting, and by an authorized representative of Contractor.

8.4 The parties shall comply with all applicable federal, State and local laws, ordinances, rules, and regulations as the same exist and as they may be amended from time to time. In addition to the District, the Contractor acknowledges and agrees that it is subject to the requirements of the Public Records Law, Chapter 119, Florida Statutes, for all matters pertaining to this Agreement.

8.5 Each party agrees to continue performing its obligations under this Agreement while any dispute is being resolved (except to the extent the issue in dispute precludes performance); provided, however, that any dispute over payment shall not be deemed to preclude performance. Each party agrees that, in its respective dealings with the other party under or in connection with this Agreement, it shall act in good faith.

8.6 This Agreement shall be interpreted and enforced in accordance with the laws of Florida and it shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. Venue for any action arising out of this Agreement shall lie exclusively in the jurisdictional courts in and for Santa Rosa County, Florida. This Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation. The

Article and Section headings and the table of contents used herein are for reference and convenience only and shall not enter into the interpretation hereof.

8.7 Should any provision of this Agreement be determined by the Courts to be illegal or in conflict with any laws of the State of Florida or of the United States Government, the remaining provisions shall not be impaired, and such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. The remainder of the contract documents shall remain valid and in full force and effect.

8.8 Nothing set forth in any provision of this Agreement shall mean or be construed that the District has waived the provisions of section 768.28, Florida Statutes, regarding the District's sovereign immunity.

8.9 All of Contractor's exceptions to the RFP set forth in its Proposal are stricken in their entirety and void except as may be specifically addressed in this Agreement.

8.10 The District shall be solely responsible for its information technology systems, including but not limited to, point-of-sale devices, e-commerce solutions, and computer hardware and software services and applications (the "District Systems"). As such, the District shall indemnify, defend and hold harmless the Contractor (subject, however, to the limitations and provisions of s. 768.28, F.S.) from and against all claims, liabilities, damages, and expenses (including reasonable attorneys' fees and costs) arising out of, and relating to or resulting from: (i) the District's failure to allow the Contractor to interface and connect the Contractor's information technology systems (the "Contractor Systems") and the District Systems to the extent necessary for the Contractor to perform the Services (or the District's failure to provide the Contractor with any reasonably requested assistance in connection therewith); (ii) the District Systems, including, but not limited to any breach or compromise thereof or any failure of the District to take the necessary security and privacy protections as are commercially reasonable under the circumstances; (iii) the District's failure to comply with applicable laws and regulations related to the protection of personal information; and/or (iv) the District's failure to comply with its written agreement(s) with the merchant card services providers related to the protection of cardholder data. Notwithstanding the foregoing, the Contractor shall be solely responsible for its information technology systems (such as software, hardware, services and applications, also defined as "Contractor Systems"). As such, the Contractor shall indemnify, defend and hold harmless the District from and against all claims, liabilities, damages and expenses (including reasonable attorneys' fees and costs) arising out of, and relating to or resulting from: (i) the Contractor's failure to interface and connect the Contractor's System and the District Systems to the extent necessary for the Contractor to perform the Services (or the Contractor's failure to provide the District with any reasonably requested assistance in connection therewith); (ii) the Contractor Systems, including, but not limited to any breach or compromise thereof or any failure of the Contractor to take the necessary security and privacy protections as are commercially reasonable under the circumstances; (iii) the Contractor's failure to comply with applicable laws and regulations related to the protection of personal information; and/or (iv) the Contractor's failure to comply with any written agreement(s) with the merchant card services providers related to the protection of cardholder data. Lastly, each party shall be responsible for the actions of its respective employee(s) relating to the aforementioned, unless such employee was acting at the direction of the other party.

8.11 This Agreement is entered into solely between, and may be enforced only by, the District and the Contractor, and this Agreement shall not be deemed to create any rights in third parties, including suppliers and customers of either party, or employees of either party, or to create any obligations of either party to any such third parties.

8.12 Except where expressly provided as being in the discretion of a party, where agreement, approval, acceptance, consent, or similar action by either party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a party under this Agreement shall not relieve the other party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

IN WITNESS WHEREOF, the parties have duly executed this Agreement:

ATTEST:

The Santa Rosa County School District

By: _____
Marilyne Pugh, Secretary
Santa Rosa County School District

By: _____
Judson C Crane
Director of Purchasing and Contract Administration

Date

Approved by Board on May 22, 2014.

Witnesses:

Sodexo America, LLC

Name: _____

by: _____
Scott Loretan, Senior Vice President

Name: _____

Date

Approved by Division of Food, Nutrition and Wellness
Florida Department of Agriculture and Consumer Services

By: _____

Date: _____