

### 30. Intentionally Omitted

b. **USDA Foods:** Awarded Distributor must be able to provide USDA Foods year-round and without additional fees imposed on HPS Institutions for any special-order requirements. HPS Institutions must have access to commodity and commercial purchase history reports including balances and usage detail. USDA Commodity Products must be easily identified on the Awarded Distributor's ordering system, indicating if Products are available at a commodity price or commercial price as in when entitlement is depleted or if Product was not diverted. Awarded Distributor's failure to supply a specified USDA Commodity Product is subject to the "Substitutions" provision set forth in Section 4(l)(7), below. Commodity pricing must be either "net off invoice" ("NOI"), if permitted by the applicable State Department of Education or other State agency having jurisdiction, or "modified fee for service, Closed Sku NOI (CNOI), or Rebate." Awarded Distributor's programs must be able to integrate with K-12 and Processor Link verification systems. **Agreed (except as otherwise stated in GFS Cost Definition)**

The processing of donated USDA Foods must be performed in accordance with processing agreements that comply with the requirements of 7 CFR Part 250. Without limiting the foregoing, Awarded Distributor must enter into a written processing agreement with any manufacturer that provides Awarded Distributor with end products containing donated USDA Foods. The agreement between processor and Awarded Distributor must be acceptable to HPS and the HPS Institutions and must reference, at a minimum, the financial liability (i.e., who must pay) for the replacement value of donated foods; not less than monthly end product sales reporting frequency; requirements under 7 CFR 250.11; the applicable value pass through system to ensure the value of donated foods and finished end products is properly credited to the HPS Institutions; and any other requirements set by FNS, the applicable State Department of Education or other State agency having jurisdiction from time to time. **Agreed, Currently USDA Commodity items are not available through Gordon Food Service Stores, Store Van Delivery, non-stock and/or Expanded Product Offering (EPO). In the event USDA Commodities are enabled through these channels, additional fees may apply**

c. **Employee Conduct:** Awarded Distributor is responsible for its employees while on HPS Institutions' property:

1. Awarded Distributor's personnel are to present a professional appearance at all times. Awarded Distributor's personnel not in an identifiable uniform must provide Awarded Distributor photo identification upon request. **Agreed**
2. Personnel must be neat, clean, well groomed, and conduct themselves in a respectable and courteous manner while performing duties at any of the HPS Institutions' property. Each HPS Institution reserves the right to deny access to any of Awarded Distributor's employees deemed unacceptable and to request alternate employee. **Agreed**
3. Awarded Distributor will provide competent supervision of employees and be responsible for any and all damage or injury to existing facilities, equipment, property or persons caused by Awarded Distributor employee. **Agreed**
4. Awarded Distributor will furnish a complete list of all employees working on HPS Institutions' property upon request. Awarded Distributor will notify the applicable CN Director of any change prior to new personnel coming to any HPS Institution property. **Agreed**

5. Awarded Distributor will perform work without unnecessarily interfering with HPS Institution activities. Awarded Distributor employees must comply with all safety protocols of the HPS Institution while performing duties at any of the HPS Institutions' property. Awarded Distributor will take precautions necessary to protect persons or property against injury that may occur because of fault or negligence of its employee. Without limiting the foregoing, Awarded Distributor will use reasonable efforts to make deliveries to school buildings after student drop-off in the morning and before student pick-up in the afternoon. **See Tab 1 GFS Exceptions to RFP**

6. Awarded Distributor's personnel are forbidden to possess, consume, or be under the influence of alcohol or marijuana; use tobacco, e-cigarettes or vaping products; possess, use, or be under the influence of unauthorized controlled substances; or possess or use weapons or firearms when on HPS Institution's property. **Agreed**

7. Awarded Distributor must conduct background checks for its employees who will have regular contact with HPS Institutions, including but not limited to contract representatives and delivery personnel, in accordance with the individual HPS Institutions background standards. **Agreed**

8. It is the responsibility of Awarded Distributor to ensure that no persons who have failed to clear background checks in accordance with any HPS Institution standard will perform any work for the HPS Institution. Violation of this provision will be grounds for immediate termination of the Master Group Agreement. **Agreed**

9. Awarded Distributor acknowledges that it will not fulfill the Master Group Agreement in any part by use of a person who is barred by any state, local, or federal law from being on an HPS Institution's property at any time. **Agreed**

10. Awarded Distributor assures that no one employed by or representing Awarded Distributor will conduct himself or herself in a manner that discourages any party from joining HPS or that compromises the integrity of HPS. **Agreed**

#### **SECTION 4. GENERAL CONDITIONS.**

a. **Master Group Agreement; Individual Member/Participant Agreements.** The Awarded Distributor must enter into a Master Group Agreement with HPS in substantially the form attached as **Exhibit B**. After the contract has been awarded, the Awarded Distributor must return a signed copy of the Master Group Agreement to HPS. The Master Group Agreement will be effective as of the date HPS accepts it. HPS will give the Awarded Distributor written notice of the effective date of the Master Group Agreement. HPS will not be a purchaser of the Products. Rather, each HPS Institution that wishes to purchase Products will enter into an agreement ("**Individual Member/Participant Agreement**") with the Awarded Distributor. The individual HPS Institutions will place orders for Products directly with the Awarded Distributor pursuant to the Individual Member/Participant Agreement at any time during the term of the Master Group Agreement, and the Awarded Distributor will make delivery of Products to each HPS Institution at the address indicated on the individual order. The Awarded Distributor will directly invoice the individual HPS Institution for Products purchased, and each HPS Institution will be solely responsible for payment of invoices covering Products ordered by, delivered to, and accepted by it. Any Individual Member/Participant Agreements will be consistent with, subordinate to and controlled by the Master Group Agreement in all respects. Any Individual Member/Participant Agreements will be deemed to incorporate by reference all the terms and

conditions of the Master Group Agreement and this RFP, including all appendices and exhibits, and will be subject to and bound by any renegotiation, modification, or termination of the Master Group Agreement by HPS; provided, that if the Master Group Agreement is terminated by HPS, an individual HPS Institution may elect to continue its existing Individual Member/Participant Agreement with the Awarded Distributor pursuant to the existing terms and conditions of the Individual Member/Participant Agreement. If an individual HPS Institution elects to continue its Individual Member/Participant Agreement with the Awarded Distributor, the individual HPS Institution will notify the vendor in writing of this election within 30 days of the termination of the Master Group Agreement by HPS. **Understood**

b. **Storage.** The Awarded Distributor must have sufficient storage capacity and distribution systems to make timely delivery of Products in sufficient quantities to handle the HPS Institutions' needs. If the Awarded Distributor fails to comply with the preceding sentence, and if as a result of such failure HPS Institutions are forced to purchase Products elsewhere at higher prices for like Products, the Awarded Distributor must reimburse the individual HPS Institutions the difference in price, as long as the Master Group Agreement is in effect and reasonable proof of purchase is presented to the vendor. **Agreed**

c. **Electronic Reports.** The Awarded Distributor must furnish HPS monthly electronic statistical reports in .xls or .txt file format concerning the purchases of each HPS Institution made pursuant to the Master Group Agreement. Failure to do so will be grounds for HPS's immediate cancellation of the Master Group Agreement. The Awarded Distributor also must furnish HPS with annual Product usage reports, by item, in descending dollar order. **Agreed**

d. **Indemnification.** The Awarded Distributor must indemnify and hold harmless HPS and the HPS Institutions, their officers, directors, managers, agents and employees from any and all liability or damages, including reasonable attorneys' fees and costs, that HPS or the HPS Institutions or their respective officers, directors, managers, agents or employees may suffer arising out of (a) the negligent or intentional act or omission of the Awarded Distributor or any person for whom the Awarded Distributor is responsible, or (b) any breach by the Awarded Distributor of its obligations under the Master Group Agreement or any Individual Member/Participant Agreement. **Agreed**

e. **Insurance.** During the term of the Master Group Agreement, the Awarded Distributor must maintain in full force and effect and at its sole cost and expense all necessary insurance, including but not limited to, the following:

1. Worker's Compensation insurance, meeting the requirements of state law, for all employees of the Awarded Distributor performing any work attributable to its operations;
2. Commercial general liability insurance, including blanket contractual and completed operations coverage, with minimum limits of Five Million Dollars (\$5,000,000.00) as the combined single limit for each occurrence for bodily injury, personal injury and property damage; and
3. Vehicle liability insurance covering all owned, hired and non-owned vehicles in use by Awarded Distributor, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of Two Million Dollars (\$2,000,000.00) as the combined single limit for each occurrence for bodily injury and property damage.