

2. Provide an acceptable electronic method for HPS on behalf of the HPS Institutions to analyze proposals as well as keep track of orders, rebates, deliveries, invoices, and quarterly reports. **Agreed**
3. Provide monthly market basket audits for items to confirm manufacturer prices as compared to the Consumer Price Index (CPI) as well as pass through of all applicable discounts, rebates, and credits. **See Tab 2 GFS Audit Procedure**
4. Provide HPS with appropriate purchasing documents for Products on a quarterly basis so that HPS may audit the pricing mechanisms used. **See Tab 2 GFS Audit Procedure**
5. Provide contracts, pricing and information, search information, technical information, etc. via a web site. **Agreed**
6. Provide field staff to assist the HPS Institutions. **Agreed**
7. Distribute USDA Food products, along with commercial products. (See Section 3b, “USDA Foods”, below). “USDA Foods” or “USDA Commodities” include value-added (brown box), processed or non-processed foods under any approved USDA delivery method, Department of Defense (“DoD”) program(s), Rebates or USDA pilot programs. **Agreed**
8. Upon request, provide copies of all procurement documents to the applicable State Department of Education or any HPS Institution, to demonstrate compliance with CN Program and government-wide regulations, including Buy American. **Agreed, to the extent such regulations or requirements are applicable to Distributor.**
9. Provide member-based input and evaluation of food items, supplies, and materials bid/proposal responses prior to award. **Agreed**
10. Provide HPS Institutions with information regarding any Buy American requirements, nutritional facts, CN label, or bid specification sheet(s) as requested. **Agreed**
11. At the request of any HPS Institution that wishes to develop or update a plan for responding as a CN Program operator to a “disaster” or “situation of distress,” as those terms are defined in 7 CFR 250.2, the Awarded Distributor will provide reasonable assistance, support and cooperation to any such HPS Institution in connection with developing or updating such response plan, consistent with all applicable laws and regulations, including without limitation 7 CFR 250.69 and 7 CFR 250.70 **Agreed**

**7. Equal Employment Opportunity.** To the extent applicable, the Awarded Distributor must comply with Executive Order 11246, “Equal Employment Opportunity,” as amended, including amendments by E.O. 11375 and E.O. 13672, and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” **Understood**

**8. Debarment and Suspension.** If the Master Group Agreement or any Individual Member/Participant Agreement is considered a “covered transaction” under the federal rules implementing Executive Order 12549, “Debarment and Suspension,” including the OMB Guidance in 2 CFR Part 180 and the USDA implementing regulations in 2 CFR Part 417, then each such Agreement will be deemed to include a term or condition requiring the Awarded Distributor to comply with Subpart C of 2 CFR Part 180, as supplemented by Subpart C of 2 CFR Part 417, and further requiring the Awarded Distributor to include a similar term or condition in all lower tier covered transactions. In addition, all responding vendors must submit a signed Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion in the form of the attached **Appendix A**. No contract will be made with parties listed on the Excluded Parties List System maintained as part of the federal System for Awards Management (“SAM”). **See Appendix A**

**9. Byrd Anti-Lobbying Amendment.** All responding vendors must submit a signed Certification Regarding Lobbying in the form of the attached **Appendix B**. Each tier certifies to the tier above that it will not use and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. All responding vendors must disclose any such lobbying activities by submitting a signed Disclosure of Lobbying Activities (Standard Form – LLL) in the form attached as **Appendix C**. **See Appendix B and C**

**10. Buy American.** Each HPS Institution that is an SFA and participates in the CN Programs is required to use the Nonprofit School Foodservice Account funds, to the maximum extent practicable, to buy domestic commodities or products for CN Program meals. A “**domestic commodity or product**” is defined as an agricultural commodity produced in the United States and a food product processed in the United States substantially using agricultural commodities that are produced in the United States, as provided in 7 CFR 210.21(d). “**Substantially**” means over 51% of the food component, by weight or volume, must be of U.S. origin. The food component of the Product is the agricultural commodity, including meats/meat alternates, grains, vegetables, fruits and fluid milk.

The Awarded Distributor must cooperate with the HPS Institutions that are SFAs in order to facilitate their compliance, and their monitoring of compliance, with this Buy American provision. This includes certification by the Awarded Distributor as to the percentage of U.S. content in domestic commodities or products supplied to SFAs. If the Awarded Distributor is unable or unwilling to make such certification or otherwise fails to comply with this Buy American provision, the SFAs will not purchase from the Awarded Distributor and may terminate their Individual Member/Participant Agreements with the Awarded Distributor. **By signing and submitting a proposal, the responding vendor certifies that the agricultural commodities and food products it proposes to supply to each SFA will be domestic commodities or products. In addition, the Awarded Distributor must provide each SFA with ongoing certification, on food products delivered, on invoices submitted and by other means as appropriate, (i) that agricultural commodities supplied to the SFA were produced in the United States, (ii) that food products supplied to the SFA were processed in the United States, and (iii) that the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the SFA exceeds 51%. SFAs may also require the Awarded Distributor to certify the actual percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the SFAs. See Tab 6 Buy American**

Exceptions to the foregoing Buy American provision are very limited; however, an alternative or exception may be approved by individual SFAs upon the vendor's request. To be considered for an alternative or exception, the request must be submitted in writing or by electronic transmission to the SFA, Attention: Food Service Director, a minimum of 1 day in advance of delivery. The request must include either:

- A. The alternative substitute(s) that are domestic and meet the required specifications, together with:
  - (i) Price of the domestic food alternative substitute(s); and
  - (ii) Availability of the domestic alternative substitute(s) in relation to the quantity ordered; or
- B. The reason for exception: limited/lack of availability or price (include price information):
  - (i) Price of the domestic food product; and
  - (ii) Price of the non-domestic product that meets the required specification of the domestic product.

**11. Contract Work Hours and Safety Standards Act.** Where applicable and in accordance with Appendix II to 2 CFR Part 200 ¶ (E), all contracts awarded by a non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C.3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **Agreed**

## EXHIBIT E

### QUESTIONS AND RESPONSES

Request for Proposal

#### HPS SCHOOL FOOD PURCHASING PROGRAM

For Distribution of Food and Non Food Supplies

March 04, 2022

#### Program Support (Max Points 15)

1. **(Max Points 5)** Will you provide in pdf format the following: Documentation of nutrition information to include Nutrition Facts Label, an ingredient statement and/or a CN label or Product Formulation Statement on manufacturer's letterhead in pdf format, using your distribution item code as the file name for each item (e.g., if 1234567 is your distributor item code for ketchup, the nutrition information file name for ketchup would be 1234567.pdf). This documentation MUST demonstrate how the Product contributes to the meal pattern requirements of the HHFK Act and provide details as to calories, saturated fat, and trans fat, and sodium contribution per serving. YES X  
NO \_\_\_\_\_

2. **(Max Points 4)** Explain how your company would assist the HPS Members be compliant with the Buy American regulations

**Buy American: Gordon Food Service has asked vendors of all stocked items to provide a response to determine if their products comply with the Buy American regulation. This information is available in Online Ordering and can be shared with members. Additionally, any documentation or letters received regarding Buy American will be shared with HPS leadership for access to their members.**

3. **(Max Points 2)** Explain what Registered Dietitian resources your company has to support the HPS Institutions.

**Gordon Food Service has over 30 Registered Dietitian in various roles including Sales, Customer Marketing and Non-Commercial leadership. In the sales role, RDs bring a unique background and experiences that may bring an increased understanding of the customer's needs. RDs in customer marketing roles have a higher acuity of operational expertise and can help strategize with the customer to meet their operational goals and comply with federal and state regulations.**

**Gordon Food Service has a Nutrition Resource Center team with a dedicated member focusing on the Education Segment to focus on regulation changes and industry trends that impact foodservice directors or the business**