

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.

Such insurance policies, except worker's compensation insurance, must name HPS and the HPS Institutions as additional insureds. The Awarded Distributor will provide HPS with a copy of its liability insurance certificate, certified to HPS. The Awarded Distributor and the insurance carrier must give HPS sixty (60) days advance notice of any insurance policy cancellation, non-renewal or material modification. **Agreed, See Tab 5 Certificate of Liability Insurance**

f. **Governmental Requirements.** The HPS Institutions include many SFAs that will use funds from their Nonprofit School Food Service Accounts, including federal grant funding, to purchase the Products. SFAs are subject to the federal rules governing the management of grant funds from the USDA, including without limitation 2 CFR 200.318-.326; Appendix II to 2 CFR Part 200; 7 CFR Part 210, including 7 CFR 210.21; and 7 CFR Parts 215, 220, 225, 226, and 250. Accordingly, the Awarded Distributor and those SFAs that enter into Individual Member/Participant Agreements acknowledge that sales and purchases made pursuant to the HPS School Food Purchasing Program are subject to the following terms and conditions:

1. **Termination.** Any HPS Institution may terminate its Individual Member/Participant Agreement with the Awarded Distributor, in whole or in part, at any time by written notice to the Awarded Distributor stating the extent and effective date of termination. Upon the effective date of termination, the HPS Institution will pay to the Awarded Distributor, without duplication, the contract price for conforming Products that were completed and delivered or performed (as applicable) in accordance with the provisions of the contract before the effective date, less any payments that the HPS Institution has made previously for such Products. If the HPS Institution made payments of the purchase price to Awarded Distributor that in the aggregate exceed the total amounts payable by the HPS Institution to Awarded Distributor under the preceding provisions, then Awarded Distributor must promptly refund the excess to the HPS Institution. **Understood**

2. **Dispute Resolution.** All parties must attempt to settle any dispute between them amicably in accordance with this subsection f(2) and subsection f(1) above. To this end, the parties must consult and negotiate to reach a solution. However, nothing in this subsection f(2) will preclude any party from commencing a proceeding if the negotiations do not reach a resolution. All disputes arising out of a contract between an HPS Institution and the Awarded Distributor under the HPS School Food Purchasing Program may be submitted by either party to arbitration to be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (including the Emergency Interim Relief Procedures). The parties agree that with respect to disputes submitted to arbitration, the arbitration award will be final and binding, and that a judgment by any court of competent jurisdiction may be rendered on the award. The place of arbitration must be in the state where the HPS Institution is located, at a place convenient to the parties unless the arbitrator(s) designate some other location. All costs and expenses of the arbitration, including actual professional fees, must be allocated among the parties at the discretion of the arbitrator(s). **Understood**

3. **Allowable Costs, Discounts, Etc.** This Subsection f.3 applies to the extent this RFP is considered a solicitation to procure a “Cost Reimbursable Contract,” as defined in 7 CFR 210.2. Pursuant to 7 CFR 210.21(f)(1), any HPS Institution that is a SFA will pay for the allowable costs of Products from the SFA’s Nonprofit School Food Service Account to the Awarded Distributor net of all discounts, rebates and other applicable credits accruing to or received by the Awarded Distributor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA. The Awarded Distributor must either (1) separately identify for each cost submitted for payment to the SFA the amount of that cost that is allowable (can be paid from the Nonprofit School Food Service Account) and the amount that is unallowable (cannot be paid from the Nonprofit School Food Service Account); or (2) exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. The Awarded Distributor's determination of its allowable costs must be made in compliance with the applicable USDA and CN Program regulations and Office of Management and Budget cost circulars. The Awarded Distributor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the applicable State Department of Education or other State agency having jurisdiction, the SFA may permit the Awarded Distributor to report this information on a less frequent basis than monthly, but no less frequently than annually. The Awarded Distributor must identify the method by which it will report discounts, rebates and other applicable