

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

credits allocable to the contract that are not reported prior to conclusion of the contract. The Awarded Distributor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, the applicable State Department of Education or other State agency having jurisdiction, or the USDA, as applicable. **Understood**

**4. Access to Records.** Upon request, the Awarded Distributor must provide the HPS Institution, the USDA, the Inspectors General, the Comptroller General of the United States, and the applicable State Department of Education or other State agency having jurisdiction, or any of their duly authorized representatives, with (1) access to documents, papers, and records which are pertinent to the contract, in order to make audits, examinations, excerpts and transcripts, and (2) timely and reasonable access to the Awarded Distributor’s personnel for the purpose of interview and discussion related to such documents (2 CFR §200.337). **Agreed**

**5. Record Retention.** The Awarded Distributor must retain all records with respect to a HPS Institution required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200.334), for at least three years after the HPS Institution makes its final payments and all other pending matters are closed. Whenever practicable, the Awarded Distributor should collect, transmit and store such records in open and machine-readable formats rather than in closed formats or on paper. **Agreed**

**6. Environmental Protection; Recovered Materials.** To the extent applicable and in accordance with Appendix II to 2 CFR Part 200 ¶ (G), the Awarded Distributor must comply with all standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), as amended, as well as any mandatory standards and policies relating to energy efficiency which are contained in any state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). Violations must be reported to the USDA and the Regional Office of the Environmental Protection Agency (“EPA”). Further, to the extent applicable and in accordance with 2 CFR § 200.322 and Appendix II to 2 CFR Part 200 ¶ (L), the Awarded Distributor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including without limitation the establishment of an affirmative procurement program for procurement of recovered materials identified in the EPA Guidelines at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. **Understood**

**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**