



Bid 23-15
Milk Products – School Nutrition Program (Annual Contract)

This Agreement is made and entered this **[Insert Date]** (the “Effective Date”) by and between **[Insert Name of Contractor]** (hereinafter referred to as “Contractor”) located at **[Insert Address]** and the **Board of Public Education for the City of Savannah and the County of Chatham**, the body corporate responsible for public education in the City of Savannah and the County of Chatham commonly referred to as the Savannah Chatham County Public School System (“SCCPSS”) (hereinafter referred to as the “District”), which is headquartered at 208 Bull Street, Savannah, GA 31401. This contract is made and entered into on **[Insert Date]** (the “Effective Date”).

WHEREAS, the District and its School Nutrition Program located in Savannah and Chatham County, Georgia, desires to utilize **[Contractor]** to provide **milk products** which were solicited in **Bid 23-15**.

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

1.0 General: The District has selected **[Contractor]** (“Contractor”) to provide the following goods and/or services: **milk products**. Contractor must be approved by the State of Georgia Food Processing Program.

2.0 Performance Period: This Agreement shall establish a contract to remain open for one year from the Effective Date. The District reserves the right to renew this Agreement for two (2) additional one year terms, if recommended by the Director of the School Nutrition Program and the Superintendent and approved by the District’s governing body, the elected School Board, to the extent such renewals are allowed by Georgia law.

3.0 Transition Period: Contractor shall agree to maintain the same terms and pricing of this Agreement for a period of ninety (90) days after the stated period of performance if this Agreement is not renewed as a transition period between contracts for the same or similar goods and/or services. If Contractor is not the successful bidder on the subsequent solicitation for the same or similar goods and/or services, Contractor shall agree to provide the same level of goods and services provided in this Agreement to the District for a period not to exceed ninety (90) days following the end of the stated performance period, allowing for an orderly transition to a new vendor.

4.0 Product List and Product Specifications

The goods and/or services to be provided by Contractor are set forth in the attached Schedule “A”.

All of the goods and/or services provided pursuant to this Agreement must also meet the following additional requirements (specifications):

- 4.1 Type, Style, and Grade.** All goods provided by Contractor pursuant to this Agreement shall be of the type, style, and grade, listed in Attachment A and packed according to the individual item requirements in Attachment A. Where a grade (Fancy, A, Choice, etc.,) has been indicated in a specification, that grade will be marked clearly on the label to ensure quality. If the individual packages or cases do not indicate a grade, then the District may refuse to accept the goods as nonconforming goods and declare the Contractor in breach of this Agreement. In the alternative, the Director of the School Nutrition Program may allow the Contractor to submit in writing a proposal as to how the Contractor will ensure that the proper grade be documented and delivered. The Director of the School Nutrition Program will review the proposal, and if acceptable to her in her sole discretion, she may recommend to the Superintendent that this Agreement be modified in writing. The Superintendent may, in turn, recommend that the District's governing body, the elected School Board, approve the modification.
- 4.2 Compliance with Federal Law and Regulations.** All goods and/or services furnished pursuant to this Agreement shall comply with the latest standards and regulations established by Federal law, and by Federal agencies such as the Department of Agriculture and the Department of the Interior. These requirements shall include, but not be limited to, weights, measures, fill of containers, drained weights, and contamination. All products provided under this Agreement will conform to standard guarantee requirements with respect to safety set forth in more detail in the commodity guaranty and indemnity agreement provision set forth below.
- 4.3 Compliance with State Law and Regulations.** All goods and/or services furnished pursuant to this Agreement shall comply with the latest standards and regulations established by the State of Georgia, to the extent such regulations are not superseded by Federal law, and by State of Georgia agencies such as the Department of Education.
- 4.4 Trans-fat Free.** All goods furnished by Contractor pursuant to this Agreement shall be trans-fat free products, except for naturally occurring small amounts of trans-fat that may be present in animal proteins.
- 4.5 Whole-Grain Rich.** All grain products furnished by Contractor for the general student population must be "Whole-Grain Rich." "Whole-Grain Rich" is defined as a product that contains greater than or equal to 50% whole grain ingredients by weight.
- 4.6 Good condition.** All goods provided by Contractor pursuant to this Agreement shall be in good condition upon delivery and free from any and all defects, including, but not limited to, damaged packaging, spoilage, over-ripeness, decay, or bruising.
- 4.7 Refrigerated and Frozen Items.** All food products provided pursuant to this Agreement shall be kept in the proper state of refrigeration to maintain their safety and freshness. Each item shall be handled in accordance with the best commercial practices with respect to refrigeration at all times. Should this Agreement require the delivery of any frozen food products, then the Contractor shall comply with following requirements. At the time frozen products are delivered to the school(s), the product temperature shall be -10 F to -20 F. Frozen products shall be delivered in properly refrigerated trucks to maintain a constant product temperature. All Delivery trucks will be clean and will comply with all Hazard Analysis Critical Control Point (HACCP) requirements. Any deliveries of frozen food products that do not meet all of these requirements may be rejected by the District as nonconforming goods and the Contractor may be held in breach of this Agreement.

- 4.8 USDA Buy American.** All goods provided pursuant to this Agreement shall meet the USDA Buy American Requirement as set forth in more detail below.
- 4.9 Product Information.** Contractor shall provide the following information for all goods provided pursuant to this Agreement: manufacturer’s name, product code number, and pack size.
- 4.10 Original Food Product Labels & Specification Sheets:** An original product label for every food item listed in Attachment A of this Agreement will be required. The food product labels will be used by parents to determine if any ingredients listed may cause food allergies. When new food items are requested and/or added, Contractor must provide an original food product label. A food specification sheet is required for every item on this Agreement. The nutrition information for food products must include at the minimum the following information:
- | | |
|-------------------|-----------------------|
| Calories | Saturated Fat (grams) |
| Sodium (mg) | Protein (grams) |
| Total Fat (grams) | Cholesterol (mg) |
| Fiber (grams) | Ingredients |
- 4.11 Expiration Dates, Production Dates, and “Best if Used By” Dates:** All food product containers provided by Contractor pursuant to this Agreement must contain product expiration dates or a manufacturer’s code that identifies “production dates” of the item. To the extent this Agreement provides for the Contractor to provide fresh food products, all fresh food products shall be marked to indicate the “best if used by date.”
- 4.12 Fresh Foods Tracking.** To the extent this Agreement provides for Contractor to provide fresh foods to the District, Contractor shall maintain and make available records tracing raw materials back to the production facility, farm, field, and harvester.
- 4.13 Packaging of Fresh Foods.** To the extent this Agreement provides for Contractor to provide the District with fresh food products, all fresh food products shall be packaged in vacuumed-packed, food grade plastic bags or materials.
- 4.14 Washing of Produce.** To the extent this Agreement provides for Contractor to provide produce or fresh cut products, only chlorinated water shall be used to wash produce being converted into fresh cut products.
- 4.15 Sourcing of Fresh Food Products.** To the extent this Agreement provides for Contractor to provide fresh food products, Contractor shall provide assistance in planning for, sourcing and marketing local food products. If the fresh food products include produce, then the District prefers to use local produce when it is in season and when it is a lower cost. Local is defined by produce grown in Georgia or a state that touches Georgia.
- 4.16 Monthly Usage Reports for All Products.** Contractor shall provide monthly usage reports by the District that include the state and farm(s) of origin (if applicable). It is District’s expectation that, over the duration of this Agreement, the Contractor will source at least (40%) of the requested fresh food items locally. For the purposes of this Agreement, the definition of “local” shall mean the State of Georgia or a state that touches Georgia.
- 4.17 Good Agricultural Practices Letters.** To the extent this Agreement requires Contractor to provide fresh food products, the Contractor must certify local farmers by obtaining GAP

(Good Agricultural Practices) letters. Farmer certification information must also include certificate of insurance, hold harmless, traceability program and third party inspection.

4.18 Quality Control Requirements. To the extent this Agreement requires Contractor to provide processed food products, all food products shall be processed in a plant with well documented comprehensive in-house quality control and HACCP Programs that are third party certified as set forth in more detail below.

The District reserves the right to determine whether or not the Contractor has complied with these product specifications in its sole discretion. If the District determines that the Contractor has provided a good and/or service that does not comply with these specifications, the District may 1) refuse to accept the good and/or service at no cost to the District, 2) require goods that have already been delivered and accepted by the District to be replaced at Contractor's expense, 3) require services that have already been performed in a manner that does not comply with Agreement to be corrected at Contractor's expense, 4) require the Contractor to reimburse the District for the cost of the nonconforming goods and/or services, 5) order replacement goods (if Contractor cannot timely provide conforming replacement goods) and order replacement goods from another vendor and charge Contractor the difference between the price listed in Attachment A and the amount the District had to pay the other vendor for the substitute goods, 6) declare Contractor in breach of this Agreement, 7) suspend the performance of this Agreement until the breach is cured and/or 8) terminate this Agreement for cause.

5.0 Quantities. Attachment A provides an estimate of the quantity of each of the goods and/or services to be provided by Contractor pursuant to this Agreement.

The estimated quantities given are intended only as a guide for the Contractor. The District does not obligate itself to purchase the full amount of the estimated quantities indicated, however Contractor agrees that it will, at a minimum, be able to provide the full amount of estimated quantities during the performance period.

The District's requirements may exceed the estimated quantities indicated in Attachment A, and the District may order more of each good and/or service than the estimated quantity indicated in Attachment A. Contractor shall provide all the quantities shown on the District's purchase orders whose mailing dates fall within the performance period or the transition period of this Agreement.

Regardless of whether the District orders more than the estimated quantities of any of goods and/or services listed in Attachment A or less than the estimated quantities indicated in Attachment A, the Contractor may not charge the District more than the agreed upon price for any of the goods and/or services listed in Attachment A.

If the District orders more of a good or service than the estimated quantity listed in Attachment A, if the Contractor cannot provide the goods and/or services ordered in excess of the estimated quantity in Attachment A, and if the Contractor can demonstrate to the satisfaction of the District that it is simply cannot, in good faith, provide the goods and/or services indicated in excess of the estimated quantity listed in Attachment A, then the District may order the additional goods and/or services from another vendor at no additional cost to the Contractor.

If the District orders more of a good or service than the estimated quantity listed in Attachment A, the Contractor declines to provide the goods and/or services ordered in excess of the estimated quantity in Attachment A, and the Contractor fails to demonstrate to the satisfaction of the District that it is simply cannot, in good faith, provide the goods and/or services indicated in excess of the estimated quantity listed in Attachment A, then the District may order the additional goods and/or services from another vendor and charge the Contractor the difference between the price listed

in Attachment A and the price the District had to pay the vendor, if the price paid by the District to the vendor providing the additional goods is greater than the price listed in Attachment A.

If Contractor fails to fulfill the full amount of the goods and/or services ordered by the District pursuant to this Agreement and the District has not exceeded the estimated quantity listed in Attachment A during the established performance period, then District, in its sole discretion, may declare that Contractor in breach of this Agreement and exercise any and all of its remedies for breach of contract provided in this Agreement and at law, up to and including termination of this Agreement. The District may also order the additional goods and/or services required from another vendor and charge the Contractor the difference between the price listed in Attachment A and the price the District had to pay the vendor, if the price paid by the District to the vendor providing the additional goods is greater than the price listed in Attachment A. The District may also declare the Contractor non-responsible for two consecutive solicitation cycles.

6.0 Samples: The District, may request at any time, to randomly sample any or all of the goods and/or services being provided to the District by Contractor pursuant to this Agreement for quality inspection and specification compliance during the term of this Agreement. If the District, in its sole discretion, is dissatisfied with the quality of the sampled goods and/or services or decides that they do not meet the agreed upon specifications of this Agreement, then the District may declare the Contractor to be in breach of this Agreement and exercise any and all of its remedies for breach of contract provided in this Agreement, up to and including termination of this Agreement.

7.0 Product Inspection: The Contractor shall be subject to continuous inspection by the District to insure compliance with all specifications required by this Agreement and all regulations of the District. In any instance where the products do not conform to the specifications contained herein or to the samples provided with the bid, the District reserves the right to reject the products as a non-conforming good, to declare the Contractor to be in breach of this Agreement, and to exercise any and all of its remedies for breach of contract provided in this Agreement, up to and including termination of this Agreement.

All products provided by Contractor pursuant to this Agreement are to be re-inspected when delivered to their final destination. All products will be checked for temperature compliance, damage, leakage, or other deviations. All products will be referenced against the invoice before the invoice is signed for at the school by an authorized representative of the District. In the event delivery is made during serving, the delivery person must be prepared to wait until an authorized representative is available to receive shipment. Please advise delivery person of such so that adequate time for delivery is scheduled. Delivery personnel must put product in cooler, stock room or freezer as directed by Cafeteria Manager or other authorized representative of the District.

8.0 Facilities and Vehicle Inspection: The District reserves the right to conduct an inspection of any and all of Contractor's facilities and delivery vehicles at any time during the term of this Agreement. Site visits will be pre-arranged and travel cost associated with the visit will be the responsibility of the District. If the District, in its sole discretion, has concerns from this inspection that Contractor's facilities are unclean, unsanitary, or inadequate to provide the goods and/or services required by this Agreement, then the District may declare Contractor in breach of this agreement and seek any remedies available to the District available under this contract and at law, including, but not limited to, 1) suspending this Agreement with Contractor until the deficiencies identified by the District are cured to the District's satisfaction 2) ordering substitute goods from another vendor until the District directs Contractor to resume performance and requiring the Contractor to pay the difference between the price listed in Attachment A and the price the District has to pay another vendor for replacement goods, and/or 3) terminating this Agreement for cause.

9.0 Substitution Clause: The process of substituting one product for another is STRONGLY discouraged as each item is strategically menued to meet the components and requirements of the National School Breakfast, Lunch and Snack Programs. Contractor is expected to furnish the brand and /or quality of products that the bidder disclosed to the District in response to the solicitation giving rise to this Agreement and listed in Attachment A of this Agreement.

Shipments of items with brand name or specifications other than those required by this Agreement shall be rejected or returned to the Contractor at the Contractor's expense and Contractor will not receive payment for any non-conforming goods and may be found to be in breach of this Agreement. Cafeteria Managers will be provided a list of the product brand names awarded on this Agreement to help ensure that only approved products are accepted and delivered. Contractor expressly agrees that Cafeteria Managers lack authority to vary the terms of this written contract, including the specifications of any products to be provided under this Agreement, the documentation requirements for deliveries, and the price. The Contractor agrees that the District may require Contractor to correct or reimburse the District for the delivery of nonconforming goods and/or services even if accepted without authority by a Cafeteria Manager.

The foregoing provisions notwithstanding, in such circumstances that the Contractor, in good faith, is unable to furnish the brand listed on the solicitation, a higher quality product, as determined in writing by the District's Director of School Nutrition or her designee, may be substituted. No substitutions for ordered products shall be made by the Contractor without prior written consent of the District's Director of School Nutrition or her designee. Requests to substitute after the performance of this Agreement has begun must include a nutrition label, list of ingredients, child nutrition product specification sheet (if available), and preparation instructions for the proposed substitute item. Substitution for ordered products without prior written consent will not receive payment and could result in the contractor being declared in breach of this Agreement. Payment for approved substitutions will be made per individual unit at the same unit price listed on Attachment A of this Agreement for the item being replaced. The Contractor must bear any difference in the cost for the substituted product and the amount of the contracted price listed on Attachment A of this Agreement.

10.0 Addition and Subtraction of Products. By written notice to the Contractor, the District may add or subtract goods and/or services from the list of goods and/or services to be provided pursuant to this Agreement in Attachment A, within the general scope of the contract. The District reserves the right for additional products to be added or deleted to the awarded contract during any active year as the market reveals and menus require.

In order to add additional items to the contract:

- The District will submit product specifications to the Contractor.
- The Contractor shall solicit costs for more than one approved product that meets the intended specifications.
- If requested, samples for testing shall be provided at no cost to the District. Each sample should include the product nutrition information, allergy information, and preparation instructions.
- Purchase prices for new items will be determined by: FOB shipping carton cost + freight-any bill backs + fixed fee per shipping carton.

The District understands that in some instances, due to the meal pattern and nutrition standards changes, food manufacturers may be adjusting the composition of food items currently included in this proposal. Therefore, some awarded items may be replaced with reformulated, updated

products that will be available to the District at the same or lower unit price and will not need to be rebid.

11.0 Product Recall. In the event that any of the goods provided by Contractor pursuant to this Agreement are found by the Contractor, the District, any governmental agency, or any court of competent subject matter jurisdiction adjudicating a dispute arising out of this Agreement or arising out of any other contract between Contractor and a third party for the same or substantially similar goods, to contain a defect, serious quality or performance deficiency, or to otherwise not be in compliance with any standards or requirement so as to require or make advisable that such goods be reworked or recalled, Contractor, will promptly communicate all relevant facts to the District's School Nutrition Program and undertake all necessary corrective actions, including those required to meet all obligations imposed by laws, regulations or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the District from taking any such action as may be required of it under such law or regulation or as the District, in its sole discretion, deems reasonably necessary for the health, safety, and welfare of District's students, staff, and visitors. The District will not accept any goods that have been reworked or recalled, the Contractor will reimburse the District for any previously delivered goods that have been recalled. The Contractor will further indemnify and hold harmless the District from any and all third-party claims arising out of the Contractor's provision of recalled goods as provided in this Agreement.

12.0 Pricing. Pricing for this Agreement shall be provided in three (3) month periods with each year of the Agreement having four (4) periods of six (6) months each. The price for each good and/or service to be provided by Contractor pursuant to this Agreement during the initial 3-month period is set forth in Attachment A. Contractor shall provide the District with a revised Attachment A which pricing for the next 3-month period no later than 30 days before the end of the current period.

- 12.1 Contractor will not charge the District more than the price per item listed in the Attachment A for the then applicable period during the Agreement and any renewal of this Agreement.
- 12.2 Contractor further acknowledges that no employee of the District may agree to an increase in the price of any good and/or service provided pursuant to this Agreement, including, but not limited to, any Cafeteria Manager, any School Nutrition Department Employee, any Accounts Payable employee, or any Purchasing Department Employee, without a formal written amendment to this Agreement recommended by the Director of the School Nutrition Program, and the Superintendent, or her designee, and approved by the District's governing body, the Elected School Board.

The DISTRICT will neither honor nor consider any fixed fee cost or markup cost increases, fuel surcharges or add-on cost during the established performance period.

13.0 Special Pricing for USDA Commodity Warehousing & Delivery Fee for Service.

To the extent this Agreement provides for Contractor to receive, store, and deliver to each school site the District's USDA commodities, this service shall be provided for a fixed fee per case, which will be invoiced upon delivery to each site under separate invoices and separate subtotals with divided categories on a single invoice.

For USDA received and stored inventory, **Contractor must provide a quantity on hand report by 10 a.m. on Friday of each delivery week.** The quantity on hand report must list distributor

item number, description, USDA code, quantity on hand amount, date received in to distributors inventory, expiration date, expiration amount, and commercial equivalent if available. It is the sole responsibility of the Distributor to assure that USDA items be shipped when available before the commercial equivalent bid item.

Only items approved by the District's School Nutrition Departments should be delivered to the schools.

The District will neither honor nor consider any cost or markup cost increases, fuel surcharges or add-on cost during the established performance period.

14.0 Escalation/De-Escalation Clause. All prices set forth in Attachment A shall be firm against any increase for the applicable performance period and any transition period for this Agreement.

- 14.1 Thirty days (30) days prior to end of the applicable performance period and before any vote by the elected School Board on the renewal of this Agreement, the District may entertain a request from the Contractor for the escalation (increase) in the price listed in Attachment A in any subsequent period. The basis for this price increase request will be a cost increase to the Contractor that exceeds ten percent (10%) of the price listed in Attachment "A" of this Agreement.
- 14.2 Contractor shall provide supporting documentation for price increase requests. Contractor may provide to the District a letter from the manufacturer or supplier on the manufacturer's/supplier's letterhead with an authorized signature and date, confirming the Contractor's increased cost. The letter shall state the current manufacturer's/supplier's price along with the manufacturer's/supplier's increased price. Contractor may also include in their request evidence of price impacts on any component of contract delivery including but not limited to materials, transportation, labor, unforeseen statutory or regulatory mandates, or other impacts. Inclusion by Contractor does not guarantee an approved price adjustment. The District shall have the right to require additional documentation and evidence from the Contractor pertaining to the requested increase, and the Contractor must comply with any District request.
- 14.3 In response to a request for a price increase, the District may agree to the price increase requested by the Contractor, the District may agree to a price increase in some amount but less than the amount requested by the Contractor, the District may decline to approve any price increase, or the District may decide to no longer order the product from Contractor. Any changes to the goods ordered and the price set forth in Attachment A of this Agreement may only be accomplished through the execution of a new written agreement between the District and the Contractor or through a written modification to this Agreement, to the extent allowed by Georgia law. Any such written agreement or written modification to this Agreement must be recommended by the Director of the School Nutrition Program, and the Superintendent, or her designee, to the District's governing body, the elected School Board, and subsequently approved by the elected School Board. Any price changes will go into effect as provided in any such written agreement or written modification to this Agreement approved by the School Board.
- 14.4 The District recognizes extreme market conditions may adversely impact other aspects of contract performance aside from pricing. The District will consider Contractor documentation relating to delivery times and schedules, labor

shortages, and other non-price related terms and conditions. Contractor shall have the affirmative and proactive responsibility to address any non-price issue in advance of the performance issue or immediately upon discovery. Any contractor who does not raise and document these issues and receive written District approval for any changes to the Agreement performance expectations shall be held accountable to the original terms of the Agreement.

The District will not consider any request for a price increase solely to increase Contractor's profit or margins.

15.0 Incentives, Discounts, Rebates, and Credits. The Contractor must bring to the attention of the District all rebates, incentives, or any other form of remuneration which in effect lowers costs to the Contractor. The Contractor must pass on to the District all rebates or bill-backs from Contractor's manufacturers/suppliers within thirty days of the Contractor receiving the rebate or bill-back from the manufacturer/supplier.

16.0 Piggyback Clause. Other State and Local Government Agencies within the State of Georgia may buy off this Agreement at the same prices listed in Attachment A during the performance period, pending agreement between the Contractor and the third-party entity.

17.0 Cost Reimbursable Contracts.

- 17.1 The Contractor's allowable costs (expenses) will be paid from the District's nonprofit school food service account to the Contractor net of all discounts, rebates and other applicable credits accruing to or received by the Contractor or any assignee under this Agreement, to the extent those credits are allocable to the allowable portion of the costs billed to the District;
- 17.2 (A) The Contractor must separately identify for each cost (expense) submitted for payment to the District 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

(B) The Contractor must 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;
- 17.3 The Contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;
- 17.4 The Contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the District 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 State agency, the District may permit the Contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
- 17.5 The Contractor 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; and

- 17.6 The Contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the District, the State agency, or the Department.
- 17.7 Prohibited expenditures. No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

18.0 Order Placement: The District's School Nutrition Program will compile a file of all individual school orders placed by each School's Cafeteria Manager and will send this file of all orders to Contractor weekly on Wednesdays when school is in session. Contractor will deliver all goods and/or services ordered to all school sites beginning the following Monday and as needed throughout the rest of the week to meet the District's needs to ensure product quality and freshness as required by this Agreement.

No Cafeteria Manager at an individual school is authorized to place an order directly with the Contractor and the Contractor will not accept any attempted director orders from Cafeteria Managers.

In extreme situations, such as a freezer outage, "Emergency" orders will be phoned to the Contractor by the School Nutrition Program Central Office and followed up with a written order confirmation. Contractor will be careful not to double bill the District for any phoned in orders followed up with a written order confirmation. Deliveries of phoned in orders must meet all of the other specifications and documentation requirements of any other order. No backorders will be accepted.

19.0 Emergency Orders. Emergency Orders may be placed occasionally. The Contractor is expected to make delivery within twenty-four (24) hours of notification. If the Contractor cannot provide the supplies within the emergency delivery period, the District has the option to purchase those supplies from another source with no penalty to either party.

20.0 Order Cancellation. Only the authorized representative of the School Nutrition Program may cancel a purchase order that has already been placed by the School Nutrition Program. If, for any reason, all products ordered cannot be delivered by the Contractor in the required delivery week, the Contractor shall notify the District's School Nutrition Program, giving name of school and product/quantities not delivered. The cancellation of a line item or purchase order by the Contractor could result in the contractor being declared in default.

21.0 Deliveries.

21.1. The District will be submitting weekly food orders for all 50 delivery sites for approximately 40 weeks during the school year. Currently it is a District policy that no school receive an after-hours delivery. The Contractor must submit a delivery schedule to the District within one week of award, noting the day of the week that deliveries will be made to each school.

21.2. A list of schools, addresses and phone numbers was provided to Contractor through the solicitation process giving rise to this Agreement and an updated list of schools, address, and phone numbers may be provided to Contractor from time to time by the

District or upon request by the Contractor. Deliveries shall be made as ordered by the District's central School Nutrition Program by school, Monday through Friday according to the schedule provided by the Contractor between the hours of 6:30 a.m. and 2:00 p.m., unless expressly arranged and agreed to by a school's Cafeteria Manager. If delivery will be made on days other than as listed on the schedule, the Contractor must contact the District's central School Nutrition Program at least forty-eight (48) hours before scheduled delivery date to obtain approval for the delivery. If the delivery date is on a District holiday, the delivery shall be made on the next business day for the District following the holiday.

21.3. Time of delivery is a material term of this Agreement. If the Contractor cannot meet the required delivery date, the Contractor may be declared to be in breach of this Agreement by the District.

21.4. Only an authorized school nutrition representative, such as a Cafeteria Manager, may accept and sign for deliveries. However, Cafeteria Managers do not have authority to vary the terms of this Agreement. If it is subsequently determined through an audit or otherwise that a Cafeteria Manager has accepted for delivery goods and/or services that do not comply with the specifications or pricing terms of this Agreement, then Contractor agrees to correct its delivery of nonconforming goods and/or services by replacing the non-conforming goods and/or services at Contractor's expense, cancelling any charges for non-conforming goods and/or services, or reimbursing the District for the price paid for any non-conforming goods and/or services.

21.5. At the time of delivery, the Contractor's delivery agent shall present two (2) copies of the Contractor's invoice for the goods and/services to be delivered so that the Cafeteria Manager may review the invoice during the unloading and inspection of the goods to be delivered or the provision of the services to be performed. Upon completion of the delivery of the goods and/or services, the Contractor's delivery agent shall also provide the Cafeteria Manager an additional document, sometimes called a receipt, delivery receipt, delivery ticket, or invoice, confirming that all of the goods and/or services provided on invoice were actually delivered or noting any goods and/or services on the Contractor's invoice that were not delivered or not accepted by the District's Cafeteria Manager.

21.6. All deliveries made to District sites shall require inside delivery. The prices included in Attachment A of this Agreement must include any and all delivery charges. District staff will not participate in the removal of merchandise from any truck or transport vehicle.

21.7. Due to safety concerns, managers and their staff are required to keep all outside doors locked at all times. Doors must not be propped open during deliveries.

21.8. All delivery trucks must be clean, sanitary, and free from dirt and debris. The Cafeteria Manager or her designee may refuse a delivery if the truck is not clean and sanitary.

21.9. The District reserves the right to require Contractor to reimburse the District for overtime payments made by the District to school employees due to late deliveries by Contractor.

21.10. If the goods and/or services have not been delivered/completed by the specified delivery date and no written extension of such delivery date has been granted by the District, the District reserves the right to cancel the purchase of the bid items/services and/or any other pending purchase orders to the same vendor. If delivery of goods or services is not completed by the specified delivery date, then the District may, without

liability and in addition to any other rights or remedies, terminate the agreement by notice, effective when received, as to goods not yet delivered or rendered. The District may purchase substitute goods and/or services and charge vendor for the difference between the price listed in Attachment A and the cost of the substitute goods from the other vendor.

21.11. The number of delivery sites and delivery site addresses are subject to change due to the needs of the District.

22.0 Delivery of USDA Commodity Foods. To the extent this Agreement provides for Contractor to receive, store, and deliver to each school site the District's USDA commodities, it is the Contractor's responsibility to ensure that the manufacturer processing any USDA commodity foods provided pursuant to this Agreement, has an approved processing agreement, an approved Summary End Product Data Schedule (SEPDS), and are approved for Net Off Invoicing ("NOI") with the Georgia School Nutrition Program (GSNP).

NOI Requirements:

- The District has a positive inventory "on the books" or "in the bank"
- Distributor must sell at a net price + distribution fees
- Fully Substitutable Commodities
- Identical Commodity/Commercial Products
- Processor sells to distributor at gross price
- Distributor sells product to any customer
- Sales Verification
- Processor responsible to conduct the District's sales verification
- The District is responsible to confirm receipt of NOI product AND commodity value
- The District takes title of product once the distributor delivers product.
- Distributor invoices the District the net price. The invoice must identify the gross case price and on a separate line the value of donated food(s) per case.
- Distributor must have the technology in place to meet the reporting requirements of the processors for NOI commodity processed items, K12 Foodservice or Processor Link.

USDA value is an expense to the District and will be taken into consideration with distributors' quote when calculating the base value cost. The Georgia Department of Education has approved the Value Pass Through (Net Off Invoice) system and the awarded Distributor must be capable of participating. Contractor agrees to fill out the Value Pass Through (Net Off Invoice) Recipient Agency & Distribution Agreement attached as Attachment G to the District's solicitation giving rise to this Agreement, which is incorporated as part of this Agreement by this express reference.

23.0 TERMS OF PAYMENT & INVOICING

23.1 The Contractor shall only invoice the District after the goods and/or services to be provided by Contractor pursuant to this Agreement 1) have been ordered by the School Nutrition Program as required by this Agreement, 2) have actually been delivered by the Contractor to the District on time, in the condition required by this Agreement, in the quantities ordered by the District, and 3) accepted by the District.

23.2 At the time of delivery, the Contractor's delivery agent shall present two (2) copies of the Contractor's invoice (sometimes called a delivery invoice) for the goods and/services to be delivered so that the Cafeteria Manager may review the invoice during the unloading and inspection of the goods to be delivered or the provision

of the services to be performed. All delivery invoices must be fully itemized, showing unit and extended cost as well as any discount associated with the item. Invoices must have an invoice number and date. Invoice numbers must not be duplicated during the same school year. The font size on the invoice must be no smaller than 10 points for the invoice number, item name and total. Bolded print is preferred for these items. In addition to these requirements, the invoice must have an acceptable degree of legibility to enable scanning for electronic document filing.

- 23.3 If delivery is made during business hours, the Contractor's delivery agent shall request the Cafeteria Manager or her designee to sign a copy of the delivery invoice. The District requires all deliveries be made beginning no earlier than 6:30 a.m. and completed by 2:00p.m.
- 23.4 Upon completion of the delivery of the goods and/or services, the Contractor's delivery agent shall also provide the Cafeteria Manager with an additional document, sometimes called a receipt, delivery receipt, delivery ticket, or final invoice, confirming that all of the goods and/or services provided on invoice were actually delivered or noting any goods and/or services on the Contractor's invoice that were not delivered or not accepted by the District's Cafeteria Manager. This document shall be signed by the Contractor's delivery agent and the Cafeteria Manager. This document must have an acceptable degree of legibility to enable scanning for electronic document filing.
- 23.5 In the event that the Contractor forgets to leave a copy of the delivery invoice and/or the delivery receipt, the District may not make a payment until signed delivery invoices and/or delivery receipts are received by the District. If the Contractor fails to provide the District with a delivery invoice and/or delivery receipt signed by the District's Cafeteria Manager within thirty (30) days of the delivery, the District will presume that the delivery did not occur, and no payment will be made.
- 23.6 After delivery, the Contractor will also send an invoice for payment to the District's Accounts Payable Department at the address set forth below within two (2) business days after delivery has occurred. This invoice for payment shall only include charges for goods and/or services that 1) have been ordered by the School Nutrition Program as required by this Agreement, 2) have actually been delivered by the Contractor to the District on time, in the condition required by this Agreement, in the quantities ordered by the District, and 3) accepted by the District. All invoices for payment must be fully itemized, showing unit and extended cost as well as any discount associated with the item. Invoices must have an invoice number and date. Invoice numbers must not be duplicated during the same school year. The font size on the invoice must be no smaller than 10 points for the invoice number, item name and total. Bolded print is preferred for these items. The Accounts Payable Department will compare the invoices for payment against a copy of the delivery invoices and delivery receipts provided to the District's Cafeteria Manager.
- 23.7 When submitting invoice for payment, Contractor shall list the following items on their invoice. In addition, Contractor shall mail all invoices to the address below:
1. Purchase Order Number
 2. Project Name
 3. Site Description

4. Description of Work
 5. Bid Number (**Bid 23-15**)
- 23.8 The District may require access to Contractor's ordering system as well to help confirm the product was actually ordered, delivered, and accepted by the District. If the invoice has been posted, all changes including changes in pricing, must be done on a debit or credit memo so there can be no confusion on products and prices.
- 23.9 Approved invoice payments will be made weekly. The process of approval of invoices begins when all documentation necessary to complete the transaction has been received by the Accounts Payable department. The approval of an invoice for payment by the Accounts Payable employees or any other employees will not prevent the District from requiring the Contractor to correct any billing or other errors discovered by the District after payment, by an Audit or otherwise.
- 23.10 Credit or debit memos provided by Contractor to reflect corrections to invoices must be provided within (15) days of the date of the invoice if initiated by Contractor or within (15) days after request by the District, if the request for a correction is initiated by the District. Credit/Debit memos must be provided via either U.S. mail, e-mail, or fax.
- 23.11 Monthly statements showing all outstanding invoice numbers and amounts shall be submitted for each school to the District's Accounts Payable Departments, at the above addresses. **No statements should be mailed to the schools.**
- 23.12 All original invoices for payments, monthly statements, credit memos, or debit memos should be mailed to:
- Savannah-Chatham County Board of Education
Attention: ACCOUNTS PAYABLE
208 Bull Street Room 119
Savannah, Georgia 31401
EMAIL: apinvoices@sccpss.com
- 23.13 Monthly statements showing bid/contract number, invoice numbers and amounts shall be submitted for each school to the District's Accounting Office at the addresses detailed above. Payment will be made by the District to the official address of the Contractor of record. Payment checks may not be diverted to another address or Contractor.
- 23.14 Payment Terms are 2% 10 Net 40.

24.0 Utilization Reports. The Contractor must provide a monthly District usage report that shows the totals purchased for each food product. The District will also need a Site report for every school that shows the totals purchased for each food product. The preferred file format for these reports is Microsoft Excel.

In order to meet manufacturer rebate deadlines, the District must receive utilization reports via email or soft copy by the 15th of each month.

Distributor must provide usage reports by specific manufacturer, specific time frame and/or by school as requested.

25.0 Record Retention, Access, and Audit Clause. The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the District's School Nutrition Program throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records.

The Contractor shall permit any Auditor from the District, or any the Auditor of the State of Georgia or any authorized representative of the School Food Authority, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State and/or the District reserves the right to charge the Contractor for the cost of the audit and to require the Contractor to correct the incorrect billings or improprieties, including repaying the District an appropriate reimbursement for incorrect billings resulting in overcharges to the District. Evidence of criminal conduct will be turned over to the proper authorities. The District may also offset/recoup amounts owed by the Contractor to the District for incorrect billings or other improprieties discovered in an audit against amounts owed by the District to the Contractor for goods and/services provided by Contractor. The District may withhold making payments to a Contractor pending resolution of an audit if the District has a good faith reason to believe that a billing error or other impropriety has occurred.

26.0 Hazard Analysis And Critical Control Point (HACCP) Requirements. The District required Contractor to present a Hazard Analysis Critical Control Point (HACCP) plan during the solicitation process giving rise to this Agreement. The Contractor must follow the provided plan, and the District may require Contractor to provide proof that it is following the HACCP plan. To the extent Federal or State regulations change to impose more demanding HACCP plan requirements or to the extent a Federal or State regulator determines that Contractor's HACCP plan for the District must be modified, then Contractor shall change its HACCP to meet those more demanding requirements. The Contractor shall only purchase goods and/services from manufactures and/or suppliers that have an HACCP program in place that meets or exceeds the District's requirements for the HACCP plan with Contractor. The District may require documentation of HACCP plans implemented by Contractor's manufacturers and/or suppliers. The District may direct the Contractor to stop purchasing goods and/or services from manufacturers and/or suppliers that do not meet the District's HACCP plan requirements.

27.0 Pandemic Preparedness and Recovery. Contractor submitted a business strategic preparedness plan for business continuity and recovery should a pandemic event strike the distributor during the solicitation process giving rise to this Contract. Contractor will follow its pandemic preparedness and recovery plan presented to the District should a pandemic event strike the distributor. Contractor may be in breach of this agreement for failure to do so and will be required to indemnify the District as provided in this this Agreement.

28.0 Preference to Supplies, Materials, and Agricultural Products Produced In Georgia. Under OCGA § 50-5-61, there is a required preference for products manufactured or produced in the State of Georgia if it is reasonable and practicable and will not sacrifice quality. During the performance of this Agreement, Contractor shall provide such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state (Georgia) as may be reasonable and practicable, when such preference shall not sacrifice quality. With this solicitation,

Contractor submitted information regarding its ability provide supplies, materials, equipment, or agricultural products from Georgia. Contractor's failure to comply with representations during the solicitation process to purchase supplies, materials, equipment, or agricultural products from Georgia in a manner consistent with Contractor's representations during the solicitation process shall be a breach of this Agreement, unless Contractor's inability to obtain Georgia product results from the actions of third parties or natural events beyond Contractor's control.

29.0 USDA Federal Regulations. Contractor must comply with the applicable USDA Federal Regulations for Child Nutrition Programs – 7 CFR and with the laws of the State of Georgia.

30.0 Clean Air Act And Clean Water Act. Contractor agrees to comply with the applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7401 et seq., section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations. Contractor certifies that none of the facilities it uses to produce goods provided under the contract are on the Environmental Protection Authority (EPA) List of Violating Facilities; and Contractor will immediately notify the District of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.

31.0 Energy Policy and Conservation. Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state's energy conservation plan issued in compliance with the Energy policy and Conservation Act (Public Law 94-163, 89 Stat.871).

32.0 Buy American. Contractor must comply with the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Buy American Act -7 CFR 210.21) which requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the contiguous United States to purchase, to maximum extent practicable, domestic commodities or products for use in meals served under the NSLP and SBP. The term 'domestic commodity or product' means—(i) An agricultural commodity that is produced in the United States; and (ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. Substantial means over 51% of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

There are limited exceptions to the Buy American requirements that allow for the purchase of non-domestic food when it is truly impractical to use domestic food. In order for the District to approve an exception, the Contractor must document, and the District must make findings supporting, the following:

- (a) Competitive bids reveal that the costs of the U.S. product are significantly higher than the non-domestic products; or
- (b) Use of a non-domestic alternative food is necessary because the domestic good is not produced or manufactured in sufficient and reasonably available quantities of a satisfactory quality.

The District will also consider the use of domestic alternative foods before approving an exception. For example, the District may consider using domestic apples as a substitute for non-domestic pears.

33.0 USDA Non-Discrimination Statement. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its

Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) Email: program.intake@usda.gov.

This institution is an equal opportunity provider.

34.0 USDA Civil Rights Assurance. The Contractor hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part 50.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

35.0 Pure Food Guaranty and Indemnity Agreement:

- 35.1 Contractor does hereby guarantee that, as of the date of shipment or delivery, each and every article of food, drugs or other commodity included in any shipment or other delivery hereafter made by Contractor to, or on the order of District, is, on such date, (i) not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act; (ii) not an article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into interstate commerce; and (iii) not adulterated or misbranded within the meaning of or in violation of any disclosure or warning required under the pure food and drug or health, safety or environmental laws, regulations or ordinances of any state or other government authority which are applicable to such shipment or delivery;

- 35.2 Contractor does hereby agree to indemnify, defend and hold the District harmless from and against any and all charges, actions and proceedings brought against the article and/or the District for or on account of any alleged adulteration, misbranding of or other law violations pertaining to such article referred to in paragraph 35.1 hereof for which Contractor is responsible hereunder, including the loss and reasonable expenses (including, without limitation, attorney's fees and costs), if any, incurred by District as a result thereof; and
- 35.3 Contractor does hereby agree to indemnify, defend and hold the District harmless from and against any and all claims, demands, actions and causes of action which are hereafter made or brought against the District by any person for the recovery of damages for the injury, illness and/or death of any person or animal which is caused or alleged to have been caused by the handling, delivery, consumption or use by such person or animal of any article of food, drugs or other commodity shipped or delivered by Contractor to the District, including, but without limitation, any judgment rendered against or settlement paid by or on behalf of District in any such action and the reasonable attorneys' fees and costs, if any, incurred by or on behalf of District in connection therewith.
- 35.4 With respect to paragraphs 35.1 and 35.2 hereof, Contractor does not guarantee against any such article becoming adulterated or misbranded within the meaning of the Act or any of the laws or ordinances after shipment or delivery to District, by reason of causes beyond Contractor's control (provided that any adulteration or misbranding which is found to exist after such shipment or delivery and which is caused by any defect in the processing or packing of such article by the processor or packer thereof or by the defective condition of any raw materials used in the processing or packing of such article or by any defect in the container in which the article is packed shall be regarded as having existed at the time of such shipment or delivery for the purposes of paragraph 34.1 hereof), and in those cases in which an article is shipped under District's brand labels Contractor's responsibility for misbranding shall be limited only to that resulting from the failure of the article to conform to the purchase specifications or label furnished by the District, provided that Contractor shall not be responsible for such misbranding if the District insists upon the use of District's brand label after the Contractor has notified the District, in writing, of the defects of the label giving rise to any such liability;
- 35.5 With respect to paragraph 35.1 hereof, the indemnity provisions therein contained shall not be applicable to any claim, demand, action, or cause of action which is founded upon the alleged injury, illness and/or death of any person or animal if it is established that such alleged injury, illness and/or death resulted, solely and independently of all other means, from the negligence of the District.
- 35.6 This guaranty shall continue beyond the termination of this Agreement with respect to all articles of food, drugs, and other commodities purchased or ordered by the District from Contractor prior to the termination of Agreement.

36.0 General Indemnity. In addition to the pure food guaranty and indemnity agreement set forth above, to the maximum extent permitted by Georgia law, the Contractor shall indemnify and hold harmless the District, its Board Members, officers and employees (collectively the "Indemnitees") from any and all claims, liabilities, damages, losses and costs, including, but not limited to, the District's reasonable attorneys' fees and expenses incurred in the defense thereof, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this

Agreement. The parties do not intend for this indemnification provision to extend to claims for losses or injuries or damages caused solely by the negligence of the Indemnitees.

This indemnification obligation shall not be construed to negate, abridge, or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph.

However, Contractor recognizes and agrees that neither this Agreement nor any other contract with or solicitation by the District shall obligate the District to indemnify, save or hold harmless Contractor or any other vendor for any future claim, loss, expense, or liability.

37.0 Intellectual Property Indemnity. The Contractor shall indemnify and hold the District harmless from any suits or claims of infringement of any patent rights, copyrights, or trademarks arising out of any patented, copyrighted, or trademarked materials, methods, systems, goods and/or services, used by the Contractor.

38.0 Warranty of Quality. Contractor warrants that all products furnished under this Agreement shall meet the specifications set forth in this Agreement. Contractor shall replace any goods and/or services that do not meet the specifications of this Agreement at no cost to the District in time to minimize disruption to the District. To the extent Contractor is unable to provide replacement products meeting the specifications of this Agreement in time to minimize disruption to the District, the District may order replacement products from another vendor and charge Contractor for the difference between the price listed in Attachment A of this Agreement and the price paid by the District to another vendor to obtain substitute goods, in addition to holding Contractor in breach of this Agreement and exercising any other rights or remedies the District may have at law, including the termination of this Agreement.

39.0 Taxes. Contractor will timely pay all taxes lawfully imposed on bidder with respect to this Agreement. The District makes no representation whatsoever regarding any tax liability of Contractor, nor regarding any exemption from tax liability related to this Agreement.

40.0 Personnel And Staffing. Contractor warrants that all persons assigned to perform services under this Contract are either lawful employees of Contractor or lawful employees of a sub-contractor of Contractor authorized by Contractor and the District. All persons assigned to perform services under this Contract shall be qualified to perform such services. Personnel assigned by Contractor shall have all professional licenses required to perform the services.

41.0 Supervision Of Contractor Personnel. The Contractor must supply all necessary and sufficient supervision over the work that is being performed and will be held solely responsible for the conduct and performance of his employees or agents involved in work under the contract.

42.0 Contractor Personnel.

42.1 Contractor's staff is expected to present a professional appearance. All personnel of the Contractor will be neat, well groomed, properly uniformed in industry standard uniforms and are expected to conduct themselves at all times in a responsible and courteous manner while performing any work under a resulting contract and/or whenever they on District property. The following code of conduct will be adhered to by the Contractor, his agent(s) and/or his employees:

42.2 Contractor submitted with its bid in response to this solicitation a list of all employees, including back-up personnel that will be providing services under this Agreement. Any additional employees assigned to the project must be approved

by the District before those employees will be allowed to enter on District property to supply services.

- 42.3 All employees of the Contractor shall wear a recognizable uniform. All service technicians performing work must carry a government-issued photo ID. Service technician(s) will present ID to District Staff upon request. This provision will be strictly enforced.
- 42.4 The use of tobacco or tobacco products on District property is prohibited by State law.
- 42.5 The Contractor will not be permitted to utilize Day Labor or Temporary Workers to provide any services at any District facility. Failure to comply with this requirement could result in immediate termination of contract with the Contractor could result in breach of contract.
- 42.6 Neither the Contractor nor employees of the contractor are not permitted to play loud music, to make unnecessary noises, or to use vulgar or inappropriate language that causes offense to others.
- 42.7 The employment of unauthorized or illegal aliens by the Contractor is considered a violation of Section 247A (e) of the Immigration and Naturalization Act. If the Contractor knowingly employs unauthorized aliens, such a violation shall also be cause for termination of contract.
- 42.8 Possession of firearms will not be tolerated on District property. No person who has a firearm in their vehicle will be permitted to park on District property. Any employee of the Contractor found in violation of this policy will be immediately asked to leave, and will not be allowed to return to perform further work without the consent of the District.

Furthermore, if any employee of the Contractor or Sub-contractor is found to have brought a firearm on District property, said employee will be removed from the District contract by the Contractor or Sub-contractor. If a Sub-contractor fails to remove said employee, the Sub-contractor's agreement with the Contractor for the District's contract will be terminated. If the Contractor fails to remove said employee or fails to terminate the agreement with the Sub-contractor who fails to terminate said employee, the Contractor's agreement with the District shall be terminated for cause.

- 42.9 Contractor certifies that he/she will not engage in the unlawful manufacture, sale distribution, dispensation, possession, or use of a controlled substance or drug during the performance of the contract and that a drug-free workplace will be provided for the Contractor's employees during the performance of the contract. The Contractor also certifies that he will secure from any subcontractor who works on the contract, written certification of the same drug free workplace requirements. False certification or violation by failing to carry out requirements of O.C.G.A. § 50-24-3 may cause suspension, termination of contract, or debarment of such bidder.

43.0 Subcontracting or Assignment.

The Contractor shall not subcontract or assign any part of the work to be covered by this Agreement without the District's prior written approval. In aid of the District's consideration of potential subcontractors or assignees, the Contractor will provide the District with the following documentation from subcontractors and assignees:

- The name and address of the subcontractor and/or assignee and list of all of the employees who will provide the services on behalf of the subcontractor/assignee, and any additional resumes or other information about the subcontractor/assignee's requested by the District.
- Proof of insurance equal to or greater than the insurance requirements of this Agreement.
- The subcontractor/assignee's city/county business license and any other certifications necessary to show that subcontractor/assignee is qualified to provide the goods and/or services required by this agreement.

44.0 Occupational Safety And Health Acts. Contractor(s) who perform any work under this contract shall fully comply with the provisions of the Federal Occupational Safety and Health Act of 1970 and any amendments thereto and regulations pursuant to the act.

45.0 Insurance Requirements: Before performing any work on the awarded contract, the Contractor shall procure and maintain, during the life of this Agreement and any renewals or extensions, insurance coverage as listed below. The policies of insurance shall be primary and written on forms acceptable to the District and placed with insurance carriers approved and licensed by the Insurance Department in the State of Georgia and meet minimum financial A.M. Best & Company rating of no less than A:8. Further the contractor will provide copies of all insurance policies required thereunder. No changes are to be made to these specifications without prior written specific approval by the Board.

A. Commercial General Liability Insurance, including Bodily Injury, Property Damage, Personal Injury, Blanket Contractual and Broad Form Property Damage Coverage, including, but not limited to, coverage for claims for personal injury and/or property damage resulting from the consumption of Contractor's food products, including, but not limited to, claims arising from food contaminated as a result of the negligence or recklessness of Contractor, with combined single limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

B. Commercial Automobile Liability Insurance, including owned, non-owned, leased, and hired motor vehicle coverage with limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage, \$2,000,000 aggregate.

C. Worker's Compensation Insurance Statutory limits in accordance with O.C.G.A.34-9-120 et. Seq.

D. Umbrella Liability Insurance with a limit of not less than \$1,000,000 per claim, \$1,000,000 aggregate.

The Board of Public Education for the City of Savannah and the County of Chatham, the body corporate responsible for public education in the City of Savannah and the County of Chatham commonly referred to as the Savannah Chatham County Public School System ("SCCPSS"), as well as all of its School Board members, officers, employees,

agents, and attorneys, shall be named as an additional named insured on all of Contractor's insurance policies, except for its Worker's Compensation Insurance policies.

46.0 E-Verify Registration Requirements and Information. With its response to the solicitation giving rise to this Agreement, Contractor provided the Contractor Affidavit Form verifying its compliance with Georgia state law requiring that every public employer and every private employer that contracts for the physical performance of services for all contracts with a county must be registered with and use the E-Verify program. During the term of this Agreement, Contractor will continue to follow this law, continue to use the E-Verify program, and provide any additional E-Verify information requested by the District during the life of the contract, including providing E-Verify information for any sub-contractors or sub-sub-contractors to this Agreement.

47.0 Compliance With Laws. Contractor will, at its own expense, obtain all necessary permits, give all notices, pay all license fees and taxes, and sales taxes, and to comply with all applicable local, State and Federal Laws, ordinances, rules, and regulations. Contractor shall agree that in the performance of the contract that he/she will comply with all laws, regulations, rules, and policies which may apply to public education in general and the operation of the District in particular, such as regulations issued by the Georgia Department of Education.

48.0 Prohibition Against Conflicts of Interest, Gratuities and Kickbacks: Any employee or any official of the District, elective or appointive, who takes receives or offers to take or receive, either directly or indirectly, any rebate, percentage of contract, money or other things of value as an inducement or intended inducement, in the procurement business, or the giving of business, for, or to, or from, any person, partnership, firm or corporation, offering, contracting for, or in open market seeking to make sales to the District shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or a fine in accord with state and or federal laws. Such persons may also be disqualified from being awarded any other purchasing contracts with the District.

49.0 Fiscal Funding: If the effective dates of this contract extend beyond June 30th of the current fiscal year, it shall be understood that purchases in the next fiscal year are conditional on the receipt of Federal and/or State funds. In the event of the discontinuance or a decrease in Federal and/or State funds at any time, the District reserves the right to change the item identifications, decrease the quantities, delete items, and/or terminate this entire Agreement to maintain the School Nutrition Program's financial integrity.

50.0 Debarred, Suspended, And Ineligible Status: Contractor certifies that neither Contractor nor of its sub-contractors have not been debarred, suspended, or declared ineligible by the District or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the District if Contractor is debarred by District or placed on the Consolidated List of Debarred, Suspended, and Ineligible List Inc. by a federal entity.

51.0 Originality And Title To Concepts, Materials, And Goods Produced: Contractor represents and warrants that all the concepts, materials, goods, and services produced, or provided to the District pursuant to the terms of this Agreement shall be wholly original with Contractor or that Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Contractor represents and warrants that the concepts, materials, goods and services and the District's use of same and the exercise by the District of the rights granted by this Agreement shall not infringe upon any other work, other than material provided by the District to Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law

or any other rights of any person, firm or corporation or other entity. Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by this Agreement.

52.0 Authority To Enter Into Contract. Contractor represents and warrants that it has full authority to enter into this Agreement and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber, or interfere with the rights granted herein to the District.

53.0 Obligations Owed To Third Parties. Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by Contractor pursuant to the Contract are or will be fully satisfied by Contractor so that the District will not have any obligations with respect thereto.

54.0 Title To Property. Contractor represents and warrants that title to any property assigned, conveyed, or licensed to the District is good and that transfer of title or license to the District is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

55.0 Force Majeure: Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non-performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations to make payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where such failure or delay is caused by circumstances beyond the non-performing party's control or which make performance commercially impracticable.

55.1 Force Majeure occurrences shall include:

55.1.1 Acts of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage, or destruction by lightning, drought;

55.1.2 Acts of war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization;

55.1.3 Civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;

55.1.4 Acts of public enemies, acts of terrorism, sabotage or piracy;

55.1.5 Plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions;

55.1.6 Act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization;

55.1.7 Explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current;

- 55.1.8 General labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises;
- 55.1.9 Shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject Party.
- 55.2 The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the contract shall jointly decided on an appropriate course of action that will permit fulfillment of the parties' objectives under the contract.
- 55.3 Contractor agrees that in the event of a delay or failure of performance by Contractor under the contract due to a force majeure occurrence;
- 55.3.1 The District may purchase products from other sources (without recourse to and by Contractor for the costs and expenses thereof) to replace all or part of the products which are the subject of the delay, which purchases may be deducted from the contract quantities without penalty or liability to the District, or
- 55.3.2 Contractor will provide the District with access to products first in order to fulfill orders placed before the force majeure event occurred.
- 55.4 Notwithstanding the above, at the discretion of the District where the delay or failure will significantly impair the value of the contract to the District, the District may terminate the contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the contract or the relative part thereof.
- 55.5 In addition, the District reserves the right, in its sole discretion, to make an equitable adjustment in the contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the contract would result in a substantial loss to Contractor. Equitable adjustment may include adjustments financially or in any terms of contract performance at the District's sole discretion.
- 55.6 Contractor shall not be entitled to an adjustment in contract price or other non-price related items caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a subcontractor or supplier shall be deemed to be within the control of Contractor.

56.0 Remedy for Non-Performance/Termination Clauses. In addition to other provisions of this Agreement governing the District's rights and remedies for a Contractor's non-performance (breach) of this Agreement set forth above, the following provisions set forth additional remedies available to the District as a result of Contractor's non-performance (breach) of this Agreement and outline the provisions by which the parties may terminate this Agreement.

56.1 Immediate Termination. This Contract will terminate immediately and absolutely if the District determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the District cannot fulfill its obligations under the Contract, which determination is at the District's sole discretion and shall be conclusive. Further, the District may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

(i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

(ii) The District determines that the actions, or failure to act, of the Contractor, its agents, employees, or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

(iii) The Contractor fails to comply with confidentiality laws or provisions; and/or

(iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidders process which is materially false, deceptive, incorrect or incomplete.

56.2 Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the District to declare the Contractor in default of its obligations under the Contract:

(i) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the District's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

(ii) The District determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

(iii) The Contractor fails to make substantial and timely progress toward performance of the Contract;

(iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or State law to the extent allowed by applicable federal or county or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the District reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

(v) The Contractor has failed to comply with applicable federal, District and State laws, rules, ordinances, regulations, policies, and orders when performing within the scope of the Contract;

(vi) The Contractor has engaged in conduct that has or may expose the District to liability, as determined in the District's sole discretion; or

(vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the District or a third party.

56.3 Notice of Default. If there is a default event caused by the Contractor, the District shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the District's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the District may:

(i) Immediately terminate the Contract without additional written notice; and/or

(ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor;

(iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies; and/or

(iv) Withhold any further payments to Contractor pending resolution of the determination of the District's damages caused by Contractor's non-performance (breach) and offset/recoup any amounts owed by the District to the Contractor against any amounts owed by the Contractor to the District as a result of its non-performance (breach), regardless of whether the District also chooses to terminate this Agreement.

56.4 Termination for Convenience. Following ten (10) days' written notice, the District may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to the District up to and including the date of termination. The District's termination for convenience in no way limits the District's right to seek recovery for any damages it suffered as a result of a breach of this Agreement by Contractor prior to the termination date, whether the breach or the damages are discovered before or after termination.

56.5 Termination Due to Change of Law. The District shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

(i) The District's authorization to operate is withdrawn or there is a material alteration in the programs administered by the District; and/or

(ii) The District's duties are substantially modified.

56.6 Payment Limitation in Event of Termination. In the event of termination of the Contract for any reason by the District, the District shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the District is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the District under the Contract in the event of termination for any reason. The District shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.

56.7 The Contractor's Termination Duties. Upon receipt of notice of termination or upon request of the District, the Contractor shall:

(i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the District may require;

(ii) Immediately cease using and return to the District, any personal property or materials, whether tangible or intangible, provided by the District to the Contractor;

(iii) Comply with the District's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;

(iv) Cooperate in good faith with the District, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and

(v) Immediately return to the District any payments made by the District for goods and services that were not delivered or rendered by the Contractor.

56.8 Effect of Later Determination. In the event the parties agree or a court of competent jurisdiction determines that the Contractor did not breach this Agreement but was terminated by the District because of an alleged breach of contract, the termination shall be considered a termination for convenience and the sole remedy available to the Contractor shall be the contractual treatment of the termination as a termination for convenience and without any other damages or relief.

57.0 Notices.

57.1 Any notices required to be sent by the Contractor to the District pursuant to this Agreement shall be delivered in writing by hand-delivery, by mail, or by a commercial delivery service, such as Federal Express or UPS, to the Directors of the School Nutrition Program and the Purchasing Department at following addresses:

The Savannah Chatham County Public School System
School Nutrition Department

ATTN: Director of School Nutrition Department
208 Bull Street
Room 308
Savannah, Georgia, 31401.

The Savannah Chatham County Public School System
Purchasing Department
ATTN: Director of Purchasing
208 Bull Street
Room 213
Savannah, Georgia, 31401.

- 57.2** Any notices required to be sent by the District to the Contractor pursuant to this Agreement shall be delivered in writing by hand-delivery, by mail, or by a commercial delivery service, such as Federal Express or UPS, to the following address:

[Insert Contractor's Address].

58.0 Miscellaneous Provisions.

- 58.1 Controlling Law.** This Agreement shall be construed under the laws of the State of Georgia, irrespective of any of Georgia's choice-of-law rules that might result in the application of the law of another jurisdiction.
- 58.2 Forum Selection.** Any claim or controversy arising out of or relating to this Agreement or any breach thereof shall be brought, maintained and pursued only in a state of competent subject matter jurisdiction located in Georgia's Eastern Judicial Circuit in and for Chatham County, Georgia, or in a federal court of competent subject matter jurisdiction located in the Southern District of Georgia, Savannah Division. The Parties hereby agree in advance to consent to personal jurisdiction in any such court, and agree in advance to waive the defense of personal jurisdiction in any such court. The Parties further agree that any such court will be a proper venue for any action arising out of or relating to this Agreement or any breach thereof and agree in advance to waive the defense of improper venue in any such court.
- 58.3 Assignability.** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of the District.
- 58.4 Entirety of the Agreement:** The terms and conditions of this Agreement and any of the attachments expressly incorporated by reference in this Agreement embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto. Contractor acknowledges, that pursuant to the doctrine of sovereign immunity, any purported oral modification to this Agreement is unenforceable.

This Agreement supersedes the solicitation giving rise to this Agreement and any offers provided by Contractor in response to that solicitation, and this Agreement will control over any inconsistent provisions in the solicitation or Contractor's response to the solicitation. Any provision in the solicitation not included in this Agreement will be deemed not have to been made a part of this Agreement.

Contractor further acknowledges that pursuant to the doctrine of sovereign immunity, purported oral or unwritten modifications of this Agreement by any District employees are unenforceable against the District.

58.5 Approval of the Elected School Board Required. Contractor agrees that no contract or claimed modification to a contract is enforceable against the District without the approval of the elected School Board. The signature of the District's Superintendent, Chief Financial Officer, or any other person purporting to act on behalf of the District, is only binding on the District if that person's execution of this Agreement or a subsequent written modification of this Agreement has been authorized by the District.

If it is subsequently determined that this Agreement or any claimed written modification to this Agreement was signed without proper authority from the elected School Board, then Contractor agrees that this Agreement or any claimed written modification of this Agreement shall be void and not constitute a binding contract or written modification on the District. Contractor agrees that it may have to repay any and all sums it may receive from the District pursuant to any alleged contract or alleged written modification of a contract that was not properly authorized by the elected School Board.

58.6 Waiver. Any failure by the District to require strict compliance with any provision of this contract shall not be constructed as a waiver of such provision, and District may subsequently require strict compliance at any time, notwithstanding any prior failure to do so. The District may further require Contractor to correct any breaches of this Agreement (or non-performance) discovered by audit or otherwise, even if the District did not detect the breach of this Agreement at the time it occurred.

58.7 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It shall not be necessary that any single counterpart hereof be executed by all parties hereto so long as at least one counterpart is executed by each party.

58.8 COVID-19 Safety Precautions. The District expects the Contractor, its subcontractors, and their employees to comply with all of the District's COVID-19 Safety Procedures and Policies, including, but not limited to mask requirements, temperature taking and symptom tests, and social distancing practices, as may be implemented by the District from time to time, with the exclusion of those policies related to how District employees report COVID-19 concerns to the Risk Management and Human Resources departments. Copies of the District's current COVID-19

Procedures and Policies are attached and may be revised in the future as COVID-19 conditions changes.

IN WITNESS WHEREOF, the parties have subscribed their names below.

[INSERT CONTRACTOR’S LEGAL NAME]

BOARD OF PUBLIC EDUCATION FOR
THE CITY OF SAVANNAH AND THE
COUNTY OF CHATHAM

[Insert Name of Officer of Contractor]
[Insert Title of Officer]

Larry O. Jackson
Chief Financial Officer

Date_____

Date_____

Attachment A: Price and Payment Information