WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION

DIRECT DIVERSION PROCESSING PROGRAM AGREEMENT FOR SCHOOL FOOD AUTHORITIES PARTICIPATING IN THE USDA FOODS PROGRAM

I. GENERAL INFORMATION

By clicking on the 'Agree' button located at the end of the agreement, the School Food Authority (SFA) and the Wisconsin Department of Public Instruction (DPI) agree to the following terms and conditions for participation in the Direct Diversion USDA Foods Program. Furthermore, the SFA agrees it will incorporate the terms of this agreement into the contracts with all applicable party(s). The SFA agrees to administer the USDA Foods Program in accordance with federal regulations including policy and instructions issued by DPI. The applicable regulations include 7 CFR; 7 CFR 250 and applicable procurement regulations 2 CFR 200.

II. AGREEMENT/POLICY STATEMENT

THE WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION (DPI) AGREES TO:

1. Order USDA Foods, to the extent available and allowable, and directly divert to the processor(s) selected by the SFA covered by this Agreement.
2. Prorate SFA pound commitments up or down to meet minimum truck load requirements, where feasible, based on survey results of USDA Foods commitments.
3. Provide a list of processors approved to process in Wisconsin to all SFAs.
4. Provide commitment information (number of pounds/cases) to processor(s) selected by SFA.
5. Monitor monthly performance reports for receipt of USDA Foods and sales to eligible SFAs.

THE SCHOOL FOOD AUTHORITY (SFA) AGREES TO:

1. Follow all federal, state, and local procurement regulations and requirements. The most restrictive regulations prevail.
2. Procure end products from only those processors approved to participate in the Wisconsin DPI USDA Foods Program.
3. Pay DPI applicable administrative fees.
4. Verify the accuracy of fee for service and delivery/handling charges from processor and/or distributor and retain proof of delivery.
5. Verify receipt of USDA Foods value. Invoices must be kept as proof of receipt and payment following applicable federal, state, and local regulations for record retention.
6. Administer the approved value pass through systems in accordance with USDA regulations and DPI guidance.
7. Confirm receipt of end products.
8. Monitor and reconcile bulk inventory at the processor(s) to verify the receipt of incoming bulk USDA Foods and the inventory draw down of the USDA Foods value of the product delivered to the SFA. SFA must verify the remaining allocation (entitlement) for accuracy.
9. Conduct all problem resolution at the processor and distributor level. Product complaint issues are SFA's responsibility.

10. Agree to the DPI's Inventory Sweep Policy.
11. Make all bulk commitment(s) to processor(s) via the Wisconsin USDA Foods Annual Order Survey. After closure of the annual order period, no adjustments by the SFA are allowed. Transfer of committed bulk USDA Food(s) to another approved processor is prohibited.
12. Allow DPI to reduce or eliminate all commitments to a processor(s) who does not receive sufficient statewide commitments.
13. Competitively procure and award a contract with a distributor for delivery of end products. The contract should include terms that:
    a. The selected processor(s) have a written agreement with distributor(s) that SFA is contracting with for delivery of end products.
    b. Pay processors and/or distributors for processing and delivery fees, if applicable. Processors or distributors will invoice SFAs.
    c. Outline processor(s) minimum run requirements.
    d. State product pricing and delivery/handling fees established with SFA's distributor.
    e. The distributor will maintain a program that meets reporting/audit requirements that tracks and deducts the USDA Foods value of the product delivered to the SFA and tracks the remaining allocation.
    f. The distributor will clarify to SFA how the sales/velocity reporting process will occur.
    g. The distributor will provide the product specified in the SFA bid and will not substitute other brands or item codes.
    h. The distributor will slot all items the SFA has requested for processing that meet distributor's volume requirements, keeping in mind that special order items must meet volume requirements and business practice guidelines.
    i. The distributor will provide proof of adequate property insurance to cover product in their care and control.
    j. The distributor will retain proof of delivery for all SFA shipments.
    k. The distributor agrees to the following billing requirements:
        i. If invoicing SFA for the Fee for Service, the distributor will provide two-line items on their invoice—one for the fee for service amount and the other for the handling/storage/distribution fees.
        ii. If invoicing SFA for NOI, distributor will itemize or note the value of the USDA Food(s) on each invoice.
    l. The distributor will provide a usage/velocity report to the processor with products and cases delivered to the SFA in a timely basis, weekly preferred.
14. If applicable, when contracting with a food vendor under a Vended Meal Agreement (VMA), ensure that the USDA Foods value contained in all processed products accrues to the SFA based on actual bulk USDA Foods received. It may be necessary for the food vendor to make an adjustment to the SFA's invoice at the end of the school year. SFA is responsible for assuring adjustment is made. SFA must receive all discounts or rebates for USDA Foods purchases made on its behalf.

The food vendor is prohibited from entering into any processing contracts utilizing USDA donated food on behalf of the SFA. The food vendor cannot enter into subcontracts for further processing of USDA-donated foods.

15. If applicable, when contracting with a Food Service Management Company (FSMC) for meal service, SFA must ensure that the USDA Foods value contained in all processed products accrues to the SFA. The FSMC must credit the SFA for the value of all USDA Foods received for use in the school food service in the school year received, whether the USDA Foods are used in that year or not. USDA Foods are considered "received" when the end product arrives at the distributor or SFA. It may be necessary for the FSMC to make an adjustment to the SFA's invoice at the end of the school year based on actual value of USDA Foods received. SFA is responsible for assuring adjustment is made. SFA must receive all discounts or rebates for USDA Food purchases made on its behalf.

    FSMC is prohibited from entering into any processing contracts utilizing USDA Foods on behalf of the SFA. The FSMC cannot enter into subcontracts for further processing of USDA Foods.

16. Comply with Federal civil rights and law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, include the Assurance of Civil Rights Compliance and the required Nondiscrimination Statement in all applicable contracts.
17. Comply with all applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment.
18. Be responsible for verification of required certifications and licenses.
19. Comply with 2 CFR § 200.214 Suspension and debarment, which states recipients and subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR part 180. The regulations in 2 CFR part 180 restrict making federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in federal awards.

Assurance of Civil Rights Compliance

The SFA hereby agrees that it will comply with:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
ix. Food and Nutrition Service (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 the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant

receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.

x. The USDA non-discrimination statement that 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, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By incorporating this assurance into this Agreement, the SFA agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the SFA, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA.

Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: https://www.usda.gov/sites/default/files/documents/ad-3027.pdf, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the

complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or
2. **fax:**
   (833) 256-1665 or (202) 690-7442; or
3. **email:**
   Program.Intake@usda.gov

This institution is an equal opportunity provider.