

# Food Service Management Contract

## Fixed Meal Prices School Year 2017-18

*Instructions: A school food authority that participates in School Nutrition Programs and contracts for management of its school food service must use this contract template to meet program requirements.*

*With the exception of provisions in this contract template that require information to be inserted, no changes or additions may be made to the standard provisions of this contract template unless approved by the Minnesota Department of Education (MDE) prior to execution of the contract. If there are any approved changes or additions to this contract, this is indicated in Section XXV and the approved changes or additions are attached.*

Whereas \_\_\_\_\_ School Food Authority (SFA) advertised for proposals for management of its school food service in accordance with the specifications attached and made a part of this contract and School Nutrition Programs (SNP) requirements, and

Whereas \_\_\_\_\_ (Company) submitted a proposal and has been awarded a contract, and

Whereas SFA has drafted this contract in compliance with SFA's specifications, Company's proposal and SNP requirements,

SFA and Company mutually agree as follows:

### **I. Scope and Purpose**

- A. Company will operate the school food service as a benefit to SFA's students, faculty and staff, in conformance with SFA's agreement with MDE. Company will manage the school food service to promote maximum participation in the programs listed below in compliance with the program requirements of the U.S. Department of Agriculture (USDA) and MDE. Company shall provide its services in accordance with generally accepted standards of care and best practices in the industry.
- B. Company will provide staff to manage the food service operations and supervise employees. Company will be an independent contractor and not an employee of SFA. The employees of Company are not employees of the SFA.
- C. Company will have the exclusive right to operate the following programs for SFA for approximately \_\_\_\_\_ annual serving days. The attached Site Data page(s) show the site(s) that participate in each program. SFA may add or remove sites and/or adjust meal periods at any time unless the change would be a material change to the contract.

- ☐ National School Lunch Program (NSLP) and Food Distribution Program (FDP)
- ☐ School Breakfast Program (SBP)
- ☐ Fresh Fruit and Vegetable Program (FFVP)
- ☐ Afterschool Snacks (NSLP)
- ☐ At-Risk Afterschool Meals (Child and Adult Care Food Program)
- ☐ Special Milk Program (SMP)

- ☐ Minnesota Kindergarten Milk Program (MKMP)
- ☐ Summer Food Service Program (SFSP)
- D. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, grants, loans, will be deposited daily in the SFA's food service account. Income in excess of expenses will remain in the SFA food service account.
- E. Company will comply with local or state sanitation requirements, including the requirements in Section V.
- F. SFA will retain responsibility, in accordance with its program agreement with MDE, to:
  - Control the quality, extent and general nature of the food service program.
  - Maintain the school food service account and overall financial responsibility for SNP.
  - Sign forms submitted to MDE including the agreement, the annual application and the monthly claims for reimbursement.
  - Establish internal controls that ensure the accuracy of meal counts prior to the submission of each monthly claim, including reviews of meal count data by site, and edit checks of meal counts data compared to attendance.
  - Monitor the food service, including if applicable annual onsite reviews, for compliance with the program requirements of MDE and the U.S. Department of Agriculture, provided that nothing in this paragraph relieves Company of its independent supervisory and monitoring responsibilities.
  - Approve menus and recipes, adjustments to menus, and other foods to be served or sold.
  - Establish the selling prices for reimbursable and non-reimbursable meals and milk, and a la carte foods.
  - Resolve program review and audit findings.
- G. SFA and Company are jointly responsible to protect the privacy and anonymity of students qualified for free or reduced-price meals, provided that nothing in this paragraph relieves Company of its independent obligation to protect the privacy and anonymity of students qualified for meal benefits.
- H. Company will cooperate with the SFA in promoting nutrition education, coordinating the SFA's food service with classroom instruction, and implementing SFA's Wellness Policy.
- I. Company will comply with the regulations and guidance of USDA and MDE that are applicable to the programs being administered, including but not limited to 7 Code of Federal Regulations (CFR) Parts 210, 215, 220, 225, 245, 250, and 2 CFR Part 200, and additions or amendments thereto.
- J. SFA may request Company to provide additional food service such as special functions and catering. SFA or the requesting organization will be billed for the actual cost of food, supplies and labor, plus a mutually agreed-upon mark-up for

administrative overhead negotiated outside of this contract that is sufficient to ensure that special functions and catering are not subsidized by the nonprofit school food service.

- K. The SFA reserves the right to maintain, add or remove present food and beverage vending machines.

## **II. Meal Prices**

SFA will pay Company the fixed rates per meal as shown below and on the attached Price Proposal from Company. For any year in which the contract is renewed beyond the original contract year, Section XXIII of this agreement specifies the index that will be used to determine the maximum percentage that the fixed meal prices may be revised from the previous contract year.

Breakfast: \$\_\_\_\_\_ per reimbursable breakfast.

Lunch and A La Carte: \$\_\_\_\_\_per reimbursable lunch and “equivalent lunch” as calculated by the Meal Equivalency Factor specified below.

Meal Equivalency Factor: SFA will pay Company for the a la carte food service, including adult meals and extra student meals, based on a la carte revenues divided by the lunch “equivalency factor” to determine the number of “equivalent lunches” that the la carte revenues represent. For school year 2017-18, the lunch equivalency factor is \$3.45, which is based on 2016-17 federal reimbursements for free lunch plus USDA Foods per-lunch entitlement value. The meal equivalency factor will be revised for any year in which the contract is renewed, based on updated USDA lunch reimbursement rates and entitlement value, as shown on the contract renewal document.

Afterschool snack: \$\_\_\_\_\_ per reimbursable afterschool snack.

Other: \_\_\_\_\_

These fixed meal payment rates were calculated without taking into account the value of USDA Foods that Company may receive for use in the school food service. Company will credit SFA for the value of USDA Foods received for use, as described in Section IV.

## **III. Meals**

- A. Company will serve reimbursable meals, snacks, or milk that meet program requirements for the meal services and sites as indicated on the attached Site Data page(s).
- B. Company will serve meals on the days and at the times requested by SFA.
- C. Company must comply with the twenty-one (21)-day menu developed by SFA for NSLP, and/or SBP, that SFA provided in the request for proposals. Any changes made by Company after the first twenty-one (21)-day menu may be made only with approval of SFA. SFA will approve menus no later than two (2) weeks prior to service.
- D. Company will promote maximum participation in the reimbursable meal programs.
- E. Company will sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.

- F. No payment will be made to Company for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of the contract.
- G. SFA will retain control of the quality, extent and general nature of the food service.
- H. Company will offer free, reduced-price, and paid reimbursable meals to all eligible children at participating sites.

#### **IV. USDA Foods**

- A. USDA Foods received for use and made available to Company shall be utilized in the food service operation for the preparation of meals and other allowable uses in accordance with 7 CFR 250. SFA shall retain title to USDA Foods provided to Company. Company shall accept and use USDA Foods in as large a quantity as may be efficiently utilized in the school food service subject to approval of SFA. Company is responsible for delivery and storage costs related to USDA Foods.
- B. Company will perform the following activities relating to USDA Foods and assures SFA that such activities will be performed in accordance with the applicable requirements in 7 CFR 250:
  - ☐ Preparing and serving meals;
  - ☐ Selection and ordering of foods in coordination with SFA and in accordance with 7 CFR 250.58(a);
  - ☐ Storage and inventory management, in accordance with 7 CFR 250.52;
  - ☐ Payment of processing fees or submittal of refund requests to a processor on behalf of the recipient agency, or remittance of refunds for the value of USDA Foods in processed end products to the recipient agency, in accordance with the requirements in 7 CFR 250 subpart C.
- C. Credits to SFA: The meal prices in Section II were calculated without taking into account the value of USDA Foods to be received that will reduce meal costs to Company. Company will disclose to SFA the types, amounts and cash values of USDA Foods received for use and provide credits as separate line items to SFA for the values of USDA Foods received for use, including entitlement and bonus foods and the value of USDA Foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a). Cash values of USDA Foods will be established by the most current documentation available from MDE at the time of crediting.

Company will disclose the receipt of USDA Foods and provide credits to SFA:

- ☐ Monthly on the monthly invoice.
- ☐ Annually on the final invoice.
- ☐ Other (describe): \_\_\_\_\_

Company will notify MDE if any foods scheduled for delivery were not received.

Annual Reconciliation of Credits: SFA will conduct an annual reconciliation of credits for USDA Foods after completion of the school year, based on the year-end *USDA Foods*

*Received Report for the Auditor* from MDE, to ensure that Company has credited SFA for the value of all USDA Foods received for use during the year. SFA reserves the right to conduct audits throughout the year to ensure compliance with CFR 210 and 250. Based on the reconciliation, Company will pay SFA for any value of USDA Foods received for use during the year that exceeds the total credits given from Company to SFA during the year. At its discretion, SFA may return to Company the amount of any credits received during the year by SFA that exceeded the value of USDA Foods received by Company during the year.

- D. Company will use all USDA donated ground beef and ground pork products, and all processed end products, in SFA's food service. Company will use all other USDA Foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the USDA Foods, in SFA's food service. Company will comply with the storage and inventory requirements for USDA donated foods in 7 CFR 250.52. Upon termination of the contract, Company will return all unused USDA donated ground beef, ground pork, end products and, at SFA's discretion, other unused USDA Foods.
- E. Company assures SFA that the procurement of processed end products on behalf of SFA, as applicable, will comply with 7 CFR 250 and with provisions of MDE or SFA processing agreements. Company will disclose to SFA the value of USDA Foods contained in such end products at the processing agreement value. Refunds received from processors must be retained in the food service account. Company will not itself enter into a processing agreement with a processor.
- F. Company and SFA will maintain records relating to the use of USDA Foods in accordance with 7 CFR 250.54. Company will have records available to substantiate that the SFA has received the benefit of the full value of received USDA Foods.
- G. SFA will ensure that Company is in compliance with the requirements of 7 CFR 250 through SFA's monitoring of the food service operation as required in 7 CFR 210 and, if applicable, 225.
- H. SFA, MDE, USDA, the Comptroller General, or their authorized representatives, may perform onsite reviews of Company's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
- I. Company accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
- J. Company will promptly credit SFA's food service account for all discounts, rebates, and allowances received by the Company associated with the purchase of processed commodity products on behalf of SFA as well as the full value of USDA Foods.

*Notification to MDE: If SFA will need to change its selection of distributor to the distributor used by Company, SFA either must notify MDE by May 15 preceding the effective contract date, or request MDE to grant an extension of the deadline for distributor selection.*

## **V. Food Safety**

- A. SFA will comply with food safety inspection requirements set by USDA for its facilities. SFA will ensure that state and local regulations are being met by Company preparing or serving meals at any SFA facility.

- B. SFA will post and maintain, in a publicly visible location, all reports on the most recent food safety inspection and provide a copy of the reports to a member of the public upon request.
- C. Company will maintain state and/or local health certifications for any facility outside the SFA in which it prepares meals and will maintain the health certification for the duration of the contract as required under 7 CFR 210.16(c). Company will comply with food safety inspection requirements set by USDA and shall ensure that state and local regulations are met in its facilities.

## **VI. Substitutions and Modifications for Medical or Special Dietary Needs**

Company will substitute food or beverage items or modify food items for qualifying students as required by federal law, state law, and SFA policies, as specified in this section.

### **A. Substitutions or Modifications for Students with Disability**

Company will provide substitutions to, or modifications of, meals as required by federal law for students who are documented by a licensed physician, physician assistant, or advanced practice registered nurse such as a certified nurse practitioner to be unable to consume the regular program meals due to a disability. The statement must identify the student's disability, the major life activities affected by the disability, the food or foods to be omitted from the student's diet, and the food or choice of foods that must be substituted. The statement must be signed and dated by the physician or other licensed medical authority and maintained on file.

### **B. Lactose-Reduced Milk for Students with Lactose Intolerance**

Company will make available at least one of the following types of lactose-reduced milk specified in Minnesota Statutes section 124D.114, upon the written request of the parent of a lactose-intolerant student: lactose-reduced milk; milk fortified with lactase in liquid, tablet, granular, or other form; or milk to which lactobacillus acidophilus has been added. A portion of a lactose-reduced milk product may be poured or served from a large container. The parent's request must be maintained on file.

Section C applies if the box is checked: ☐

### **C. Meal Substitutions for Students without Disability**

Company will provide substitutions for students who do not have a disability, but who are unable to eat the regular meals due to medical or special dietary needs, upon the written request of a recognized medical authority (physician, physician's assistant, certified nurse practitioner, registered dietitian, licensed nutritionist, or chiropractor), in accordance with SFA policy and program guidelines. The request must specify the food or foods to be omitted from the student's diet and the food or choice of foods that must be substituted, must be signed and dated by the recognized medical authority, and must be maintained on file.

Section D applies if the box is checked: ☐

### **D. Non-Dairy Fluid Milk Substitutes**

Company will provide one or more non-dairy fluid milk substitutes that are nutritionally equivalent to cow's milk to students with a medical or other special dietary need, in accordance with SFA policy and program guidelines. A request for a non-dairy fluid milk substitute must be in writing and identify the medical or other special dietary need that

restricts the student's diet, must be signed and dated by the parent/legal guardian or a recognized medical authority (physician, physician's assistant, certified nurse practitioner, registered dietitian, licensed nutritionist, or chiropractor), and must be maintained on file. Company will maintain product information on file to document that the non-dairy product(s) meet program standards for non-dairy fluid milk substitutes.

## **VII. Free and Reduced-Price Meals Benefits**

One box is checked below to identify whether SFA or Company is responsible for determining the eligibility of students for free and reduced-price school meals.

- ☐ SFA is responsible for determining eligibility for free and reduced-price meals.
- A. SFA is responsible for the determination of eligibility for free and reduced-price meals, including the development, distribution, approval and verification of meal applications, direct certification data, and conducting any appeal hearings related to eligibility determinations.
- B. SFA will provide Company with a list of students and their category of meal eligibility. The list will be updated when changes occur in a student's eligibility status. SFA will not disclose confidential information to Company from meal applications and direct certification data that is not needed for meal counts.
- C. Company will use the private data on the eligibility status of students for school meal benefits only to provide correct, approved meal benefits to students and to determine accurate meal counts by eligibility category. The meal counting system must eliminate the potential for overt identification of students eligible for free and reduced-price meal benefits.
- ☐ Company is responsible for determining eligibility for free and reduced-price meals.
- A. Company is responsible for the determination of eligibility for free and reduced-price meals, including the development, distribution, approval and verification of meal applications, and direct certification data.
- B. ☐ Company ☐ SFA will conduct any appeals and hearings.
- C. Company will use the private information provided on meal application forms, and the eligibility status of students for school meal benefits, only to provide correct, approved meal benefits to students and to determine accurate meal counts by category. The meal counting system must eliminate the potential for overt identification of students eligible for free and reduced-price meal benefits.

## **VIII. Books and Records**

- A. Company will maintain such records (supported by invoices, receipts, or other evidence) as SFA will need to meet monthly and annual reporting responsibilities.
- Company will annually provide SFA with information on food costs and revenues for reimbursable meals and for non-program foods to determine compliance with program requirements for revenue from non-program foods.
- B. Company will submit monthly operating statements in a format approved by SFA no later than the tenth calendar day after the last day of the month in which services were rendered.

- C. Company will submit meal count records in a timely manner to facilitate claims submission by SFA no later than the fifth day after the last day of the month in which services were rendered. SFA will perform edit checks on the meal count records provided by Company prior to the preparation and submission of the claim for reimbursement. Company shall provide SFA with a year-end statement.
- D. Company will make available the books and records pertaining to the contract, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including renewals) to which they pertain, for audit, examination, excerpts, and transcriptions by SFA and state or federal representatives and auditors. If audit findings regarding Company's records have not been resolved within the three (3) year record retention period, the records must be retained beyond the three (3) year period, for as long as required for the resolution of the issues raised by the audit.
- E. Upon termination of the contract, Company will surrender to SFA all records pertaining to the operation of the food service, including food and non-food inventory records, menus, production records, product invoices, claim documentation and financial reports. Company will not remove state or federal required records from SFA premises upon contract termination.



## **IX. Employees**

Current SFA employees, including site and area managers, will be retained by SFA and/or Company as described here:

SFA will have final approval authority regarding the hiring of Company's site manager.

Company will provide SFA with a schedule of employees, positions, assigned locations, salaries and hours to be worked. Locations and assignments will be provided to SFA two full calendar weeks prior to start date of operations. Staffing patterns, with the exception of the site manager, will be mutually agreed upon.

Company and SFA shall maintain the same minimum level of employee positions, hours, wages and benefits as listed on the attachments.

Company will comply with applicable federal and state wage and hours of employment requirements.

Company will be responsible for supervising and training personnel, including SFA-employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of Company management and non-management staff, except the site manager. Company will provide SFA with a list of its personnel policies and employee handbook.

Company will provide workers' compensation coverage for its employees. Company will maintain its own personnel and fringe benefits policies for its employees, subject to review by SFA.

Company will instruct its employees to abide by the policies, rules and regulations, with respect to use of the SFA's premises as established by the SFA and which are furnished in writing to the Company.

SFA will provide sanitary toilet and hand-washing facilities for Company employees.

SFA may request Company in writing to remove any Company employee who violates health requirements or conducts herself/himself in a manner which is detrimental to the well-being of the students. In the event of the removal or suspension of any such employee, Company will immediately restructure the food service staff without disruption of service.

SFA and/or Company personnel assigned to each school will be instructed in the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.

Company shall conduct periodic training on food service topics for all food service employees, including required annual civil rights training.

## **X. Monitoring**

- A. SFA will monitor the food service operation of Company through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations. If SFA has more than one site, SFA will conduct an on-site review of the counting and claiming system at each site no later than February 1 each year in accordance with its agreement with MDE.

If SFA participates in SFSP, SFA is responsible for conducting the required SFSP site visits including preapproval visits.

- B. Company will maintain the necessary records for SFA to complete required monitoring activities.

#### **XI. Advisory Group/Wellness Policy/Nutrition Standards for All Foods**

- A. Company will participate in the formation and establishment and periodic meetings of the SFA advisory board, comprised of students, teachers, and parents, to assist in menu planning in accordance with 7 CFR 210.16(a).
- B. Company will coordinate with SFA as needed to assist in implementation of SFA's wellness policy.
- C. Company will meet SNP nutrition requirements ("Smart Snacks") for foods sold a la carte and any other foods served to students during the school day.

#### **XII. Use of Facilities, Inventory, Equipment, and Storage**

- A. SFA will make available, without any cost or charge to Company, area(s) of the premises agreeable to both parties in which Company will render its services.
- B. SFA may request additional food service programs from Company. SFA reserves the right, at its sole discretion, to sell or dispense food or beverages provided such use does not interfere with the operation of the Child Nutrition Programs. SFA may expand food service operations outside the confines of the school/school district, such as expansion to non-affiliated charter schools, non-public, or neighboring public schools, which were not part of the original bid.
- C. Prior to the start of operations, Company and SFA will inventory food, including USDA Foods, and supplies on the premises. Company will utilize the inventory at a value determined by invoice. On termination of the contract, Company and SFA will take a closing inventory and add or subtract the difference to Company's cost of business.
- D. Company will maintain the inventory of silverware, chinaware, kitchen utensils and other operating items necessary for the food service operation and at the inventory level as specified by SFA.
- E. SFA will replace expendable equipment and replace, repair, and maintain non-expendable equipment, except when damages result from the use of less than reasonable care by Company employees.
- F. Company will maintain adequate storage practices, inventory and control of USDA Foods in conformance with SFA's agreement with MDE.
- G. Company will provide SFA with one set of keys for food service areas secured with locks.
- H. SFA will provide Company with local telephone service.
- I. SFA will furnish and install any equipment and make any structural changes needed to comply with federal, state or local laws, ordinances, rules and regulations.
- J. SFA will be responsible for any losses, including USDA Foods, which arise due to equipment malfunction or loss of electrical power not within the control of Company.

- K. All food preparation and serving equipment owned by SFA must remain on SFA premises.
- L. Company will notify SFA of any equipment belonging to Company on SFA premises within ten (10) days of its placement on SFA premises. SFA will not be responsible for loss or damage to equipment owned by Company and located on SFA premises.
- M. SFA will have access, with or without notice, to all of the SFA's facilities used by Company, for purposes of inspection and audit.
- N. Company will not use SFA's facilities to produce food, meals or services for other organizations without the approval of SFA. If such usage is mutually agreeable, SFA and Company must have a signed agreement that stipulates the fees to be paid by Company for facility usage.
- O. Company will comply with all SFA building rules and regulations.
- P. SFA, on the termination or expiration of the contract, will conduct a physical inventory of equipment and furnishings owned by SFA. Company will surrender all SFA equipment and furnishings to SFA in good repair and condition. Company will be responsible for correcting any discrepancies and any equipment repairs that are not the result of normal wear and tear within 30 days of the inventory.

### **XIII. Purchases**

- A. Foods purchased must meet the attached specifications.
- B. Company will meet applicable federal and state requirements when purchasing food and supplies for meals provided under this contract.

### **XIV. Sanitation**

- A. Company will comply with local and state sanitation requirements in the preparation of food.
- B. Company will place garbage and trash in containers in designated areas as specified by SFA. SFA will remove the garbage and trash from the designated areas.
- C. Company will clean the kitchen as indicated on the attached Cost Responsibility page. SFA will clean ducts and hoods above the filter line.
- D. SFA will clean the dining areas as indicated on the Cost Responsibility Detail Sheet.
- E. Company will operate and care for equipment and food service areas in a clean, safe and healthy condition in accordance with the standards acceptable to SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
- F. SFA will provide extermination services as needed.

### **XV. Licenses, Fees and Taxes**

- A. Company is responsible for paying all applicable taxes and fees, including but not limited to excise tax, state and local income tax, and payroll and withholding taxes for Company employees. Company will hold SFA harmless for all claims arising from payment of such taxes and fees. The extent of responsibility is designated in the Cost Responsibility attachment.

- B. ☐ Company ☐ SFA shall obtain and maintain required licenses or permits, as indicated on the Cost Responsibility attachment.

## **XVI. Nondiscrimination**

SFA and Company agree that no student who participates in the meal and/or milk programs under this contract will be discriminated against on the basis of race, color, national origin, age, sex, disability, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

## **XVII. Emergency Closings**

- A. SFA will notify Company of any interruption in utility service of which it has knowledge.
- B. SFA will notify Company of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

## **XVIII. Nonperformance**

- A. In the event of the Company's non-performance under this contract and/or the violation or breach of the contract terms, SFA has the right to pursue all administrative, contractual and legal remedies against Company and to seek all sanctions and penalties as may be appropriate. SFA is the responsible authority without recourse to USDA or MDE for the settlement and satisfaction of all contractual and administrative issues. This authority includes, but is not limited to, source evaluation, protests, disputes, claims or other matters of contractual nature.
- B. If either party commits a material breach, the non-breaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.
- C. Company will pay SFA the amount of any meal over-claims that are attributable to Company's negligence and that occurred during the effective dates of the contract, including over-claims based on audit or program review findings.

## **XIX. Summer Food Service Program**

Unless the box is checked below to indicate that Company will not provide food service management for the Summer Food Service Program (SFSP), Company will provide food service management, in accordance with federal regulations at 7 CFR 225 and other SFSP requirements, if SFA participates in the SFSP during the original contract term or during any contract renewal.

During any period that SFA participates in SFSP:

- Company will perform the same food service management tasks for SFSP as are provided to SFA during the school year and will pay Company for SFSP meals using the same meal payment structure used during the school year, unless SFA requested different tasks and/or payment structure that are attached to this contract.
- School will maintain responsibility for administrative functions that are prohibited from being contracted out by SFSP regulations at 7 CFR 225.15(a)(3).

- Company will provide unitized meals for SFSP unless the box below is checked to provide non-unitized / bulk meal service.
- ☐ Company will provide non-unitized / bulk quantities for SFSP, with instructions on the planned portion size for each food component. MDE's approval of SFA's SFSP application constitutes MDE's approval of a waiver from the SFSP requirement to provide unitized meals.
- ☐ If this box is checked, Company does not agree to provide food service management for SFSP. If SFA participates in SFSP during the original contract or any contract renewal, SFA will separately contract for food service management for SFSP.

## **XX. Deficit**

The requirements of Minnesota Statutes Section 124D.111, Subdivision 3, will be met if a deficit exists in the food service fund at the end of the fiscal year for this contract or for any contract renewals.

## **XXI. Insurance**

Company will meet insurance requirements:

- ☐ Attached to this contract.
- ☐ Specified here:

A. Company will maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Minnesota. A Certificate of Insurance of Company's insurance coverage indicating these amounts must be submitted at the time of contract award.

B. Comprehensive General Liability – includes coverage for:

1. Premises – Operations.
2. Products – Completed Operations.
3. Contractual Insurance.
4. Broad Form Property Damage.
5. Independent Contractors.
6. Personal Injury.

\$ \_\_\_\_\_ Combined Single Limit

C. Automobile Liability: \$ \_\_\_\_\_ Combined Single Unit.

D. Workers' Compensation-Statutory; Employer's Liability: \$ \_\_\_\_\_.

E. Excess Umbrella Liability: \$ \_\_\_\_\_ Combined Single Unit.

F. Company must name SFA as additional insured on General Liability, Automobile, and Excess Umbrella. Company must provide a waiver of subrogation in favor of SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.

- G. The contract of insurance shall provide for notice to SFA of cancellation of insurance policies 30 days before cancellation takes effect.

## **XXII. Miscellaneous**

- A. This contract will be construed under the laws of the State of Minnesota. Any action or proceeding arising out of this contract will be heard in the appropriate courts of the State of Minnesota.
- B. Company will comply with the provisions of the proposal specifications, which in all respects will be made a part of the contract.
- C. No provision of the contract will be assigned or subcontracted without prior written consent of SFA.
- D. No course of dealing or failure of a party to strictly enforce any term, right, or condition of this contract shall be construed as a waiver of the term, right or condition.
- E. Any silence, absence, or omission from the contract specifications concerning any point will be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies) and workmanship of a quality that would normally be specified by the SFA are to be used.
- F. Payments on any claim will not preclude the SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and proposal specifications.
- G. SFA is responsible for ensuring the resolution of program review and audit findings.
- H. This contract and SFA's information about its procurement process are subject to review by MDE for the purpose of determining whether federal and state requirements for SFA's participation in USDA Child Nutrition Programs have been met.
- I. MDE and USDA are not parties to this contract and are not responsible for any action or inaction by the SFA or Company.

## **XXIII. Term, Renewal, Options, Termination**

The contract is effective \_\_\_\_\_ through \_\_\_\_\_.

- A. The contract may be renewed, upon mutual agreement of SFA and Company, for up to \_\_\_\_ years after the original contract year, using the contract renewal document provided by MDE. Meal prices for a renewal contract may be adjusted up to the maximum percentage stated by MDE on the contract renewal document, which is based on the Consumer Price Index (CPI) – Food Away from Home, Midwest Region (U.S. Bureau of Labor Statistics).
- B. SFA or Company may terminate the contract for cause as allowed in Section XVIII by giving sixty (60) days written notice.

Neither party may terminate the contract without cause or for convenience, unless both parties jointly agree to terminate the contract for convenience.

- C. Neither SFA nor Company is responsible for any losses resulting from fulfillment of the terms of the contract being delayed or prevented by wars, acts of public enemies,

strikes, fires, floods, acts of God, or for any acts not within the control of SFA or Company, respectively, and which by the exercise of due diligence it was unable to prevent.

#### **XXIV. Certifications**

- A. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). If the contract exceeds \$100,000, Company certifies that it will comply with 40 U.S.C 3702 and 3704, as supplemented by the Department of Labor regulations, 29 CFR Part 5. Under 40 U.S.C 3702 of the Act, Company is required to compute the wages of every laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- B. Clean Air Act (42 U.S.C. 7401-1671q) and Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended. If the contract exceeds \$150,000, Company certifies that it will comply will applicable standards, orders, and regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations must be reported to USDA and the Regional Office of the Environmental Protection Agency.
- C. Company will comply with civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and USDA-FNS Instruction 113-1, Civil Rights Compliance and Enforcement in School Nutrition Programs.
- D. Company will comply with the Buy American provision for the purchase of food products with federal fund. Company will purchase, to the maximum extent possible, domestic commodities or products that are either (1) an agricultural commodity produced in the United States (U.S.) or (2) a food product processed in the U.S. substantially using agricultural commodities produced in the U.S.
- E. Company has signed the following attached certifications, which are incorporated here by reference and made a part of this contract.
  - Certification of Independent Price Determination.
  - Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.
  - Certification Regarding Lobbying and, if applicable, Disclosure Form to Report Lobbying.
- F. Company will comply with all other pertinent state and federal laws.

#### **XXV. Additional Provisions**

- ☐ If this box is checked, SFA and Company have agreed to additional, attached provisions that have been **reviewed by MDE** and preapproved to be in compliance with program requirements. Each additional provision attached to this contract specifically identifies the section(s) of this contract that have been added to or modified.

**XXVI. Attachments**

The following documents, including the required certifications and the accepted price proposal, are attached to and incorporated into this contract.



IN WITNESS WHEREOF, SFA and Company have executed this Agreement.

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Name of SFA

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Name and Title of SFA Authorized Representative

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Signature of SFA Authorized Representative

Date

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Name of Company

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Name and Title of Authorized Company Representative

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Signature of Authorized Company Representative

Date