



**STATE OF MICHIGAN
ENTERPRISE PROCUREMENT**

Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **071B5500002**

CONTRACTOR	GORDON FOOD SERVICE INC
	P.O. Box 1787
	Grand Rapids, MI 49501
	Mark Ricks
	517-937-4542
	Mark.Ricks@gfs.com
	*****9848

STATE	Program Manager	Various	MULTI
	Contract Administrator	Steve Rigg	DTMB
		(517) 284-7043 riggs@michigan.gov	

CONTRACT SUMMARY

PRIME VENDOR FOOD AND SUPPLIES			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
January 25, 2015	September 30, 2015	2 - 1 Year	September 30, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
1% 10 Net 30 Days		Skip Day - 1 working day between order and delivery	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
\$500.00 minimum delivery once a week			

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		September 30, 2017
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$10,629,545.00	\$0.00	\$10,629,545.00		

DESCRIPTION

Effective September 6, 2016, the second option year available on this contract is hereby exercised. The revised contract expiration date is September 30, 2017. All other terms, conditions, specifications and pricing remain the same. Per Vendor and Agency agreement, and DTMB Procurement approval.

Program Managers for Multi-Agency and Statewide Contracts			
AGENCY	NAME	PHONE	EMAIL
DMVA	Kim Graham	(517) 481-7643	grahamk@michigan.gov
MSP	Pam Koppleberger	(517) 636-0548	kopplebergerp@michigan.gov
DNR	Shari McCarthy	(989) 821-6200	mccarthys1@michigan.gov
MDHHS	Chris Sanchez	(517) 335-1161	sanchesc@michigan.gov

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B5500002
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR		PRIMARY CONTACT		EMAIL
Gordon Food Service, Inc. P.O. Box 1787 Grand Rapids, MI 49501		Matt Schichtel		Matt.schichtel@gfs.com
		PHONE		CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
		800-905-1927		9848
STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DMVA	Kim Graham	517-481-7643	grahamk@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov
CONTRACT SUMMARY				
DESCRIPTION: Prime Vendor Food and Supplies – Statewide (HPS #51 Food Purchasing Program)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 25, 2015	September 30, 2015	2-one year options	September 30, 2015	
PAYMENT TERMS		DELIVERY TIMEFRAME		
1% 10 days		Skip day – 1 working day between order and delivery		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
\$500.00 minimum delivery once a week				
DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		September 30, 2016
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$10,629,545.00		\$0.00	\$10,629,545.00	
DESCRIPTION: Effective September 4, 2015, the first option year available on this contract is hereby exercised. The revised contract expiration date is September 30, 2016. All other terms, conditions, specifications and pricing remain the same. Per Vendor and Agency agreement, and DTMB Procurement approval.				

AUTHORITY: Act 431 of 1984
 COMPLETION: Required
 PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

NOTICE OF CONTRACT NO. 071B5500002
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Gordon Food Services, Inc P.O. Box 1787 Grand Rapids, MI 49501	Matt Schichtel	matt.schichtel@gfs.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	800-905-1927	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
Program Manager:	DCH	Kristi Broessel	517-241-4012	broesselk@michigan.gov
Program Manager:	DHS	Karen Nobach	517-373-9731	nobachk@michigan.gov
Program Manager:	MSP	Vickie Olivarez	517-241-1064	Olivarev1@michigan.gov
Program Manager:	DNR	Laura Gyorkos	517-373-1455	gyorkosl@michigan.gov
Program Manager:	DMVA	Kim Graham	517-481-7643	graham@michigan.gov
Contract Administrator:	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Prime Vendor Food and Supplies-Statewide (HPS#51 Food Purchasing Program)			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
8 months	January 25, 2015	September 30, 2015	Two (2) one (1) year options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
1% 10 Days	Delivered	F.O.B. HPS Member	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
\$500.00 minimum delivery once a week			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of HPS Contract #51 and the Contract Agreement. In the event of any conflicts between the specifications and terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$10,629,545.00

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B5500002
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Gordon Food Services, Inc P.O. Box 1787 Grand Rapids, MI 49501	Matt Schichtel	matt.schichtel@gfs.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	800-905-1927	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
Program Manager:	DCH	Kristi Broessel	517-241-4012	broesselk@michigan.gov
Program Manager:	DHS	Karen Nobach	517-373-9731	nobachk@michigan.gov
Program Manager:	MSP	Vickie Olivarez	517-241-1064	Olivarev1@michigan.gov
Program Manager:	DNR	Laura Gyorkos	517-373-1455	gyorkosl@michigan.gov
Program Manager:	DMVA	Kim Graham	517-481-7643	graham@michigan.gov
Contract Administrator:	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

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1% 10 Days	Delivered	F.O.B. HPS Member	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
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\$500.00 minimum delivery once a week			
MISCELLANEOUS INFORMATION:			
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ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$10,629,545.00

Notice of Contract #: 071B5500002

FOR THE CONTRACTOR:	FOR THE STATE:
Gordon Food Services, Inc Firm Name	Signature
Authorized Agent Signature	Sharon Walenga-Maynard Sourcing Director Name/Title
Authorized Agent (Print or Type)	DTMB Procurement Name of Agency
Date	Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This COMMODITIES STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Gordon Food Service (“**Contractor**”), a Michigan Corporation. This Contract is effective on January 25, 2015 (“**Effective Date**”), and unless terminated, expires on September 30, 2015.

This Contract may be renewed for up to two additional one year period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Exhibit A**.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:

Steve Rigg
 DTMB, Procurement
 1st Floor NE, Constitution Hall
 PO Box 30026
 Lansing, MI 48909
 Email: riggs@michigan.gov
 Phone: 517-284-7043

If to Contractor:

Matt Schichtel
 National Accounts Healthcare Chain Manager
 PO box 1787
 Grand Rapids, MI 49501
 800-905-1927
matt.schichtel@gfs.com

- 3. Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

If to State:

Steve Rigg
 DTMB, Procurement
 1st Floor NE, Constitution Hall
 PO Box 30026
 Lansing, MI 48909
 Email: riggs@michigan.gov
 Phone: 517-284-7043

If to Contractor:

Matt Schichtel
 National Accounts Healthcare Chain Manager
 PO box 1787
 Grand Rapids, MI 49501
 800-905-1927
matt.schichtel@gfs.com

- 4. Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):



If to State:

Department of Human Services
See Contract Cover Sheet or most recent change notice

Department of Community Health
See Contract Cover Sheet or most recent change notice

Department of Natural Resources
See Contract Cover Sheet or most recent change notice

Michigan State Police
See Contract Cover Sheet or most recent change notice

Department of Military and Veterans Affairs
See Contract Cover Sheet or most recent change notice

If to Contractor:

Matt Schichtel
National Accounts Healthcare Chain Manager
PO Box 1787
Grand Rapids, MI 49501
800-905-1927
Matt.schichtel@gfs.com

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in **Exhibit A**) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.
Motor Vehicle Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u>	



\$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	
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If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

7. *Reserved*

8. *Reserved*

9. **Independent Contractor.** Contractor is an independent Contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent Contractor.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in **Exhibit A**, Statement of Work.

16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in **Exhibit A**. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i)



reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in **Exhibit A**. All containers and packaging becomes the State's exclusive property upon acceptance.
- 18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
- 19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in **Exhibit A**. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
- 20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Exhibit A**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in **Exhibit A**.
- 22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities; Contractor's lost profits, or any additional compensation during a stop work period.
- 23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the



same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

25. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

26. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

28. Limitation of Liability. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.



29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **State of Michigan Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
31. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
 - b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
 - c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.
32. *Reserved.*
33. *Reserved.*
34. *Reserved.*



35. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

36. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

37. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

38. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

39. Reserved

40. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

41. Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

42. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

43. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements Contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

44. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately Contract with a third party.



45. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

46. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

47. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

48. Order of Precedence. In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) **Exhibit A**; (d) any other exhibits; and (e) the Contract.

49. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

50. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

51. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

52. Entire Contract and Modification. This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice").



STATE OF MICHIGAN

Contract No. 071B5500002
Prime Vendor Food and Supplies

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

Requirement
1. Specifications
1.1 The Contractor must provide the following:
<p>The Contractor must provide the following Deliverables: The State of Michigan requires a Contract for various food and disposable paper products and supplies that have been approved for purchase.</p> <p>The Contractor shall provide the food and disposal paper products and supplies as specified and deliver in the time frame specified below.</p> <p>The State of Michigan prefers the Contractor to utilize products grown by Michigan based farmers or supplied by Michigan based vendors.</p>
1.2 Quality Assurance Program
<p><u>QUALITY ASSURANCE:</u></p> <p><u>Hazard Analysis Critical Control Point (HACCP)</u></p> <p>The Contractor cannot accept any of the following products for return, however, where appropriate, credits will be issued.</p> <ul style="list-style-type: none"> • Produce (fresh cut potatoes, mushrooms, Markon/RSS vegetables, head lettuce, Markon/Fresh Express salads, wet salads, herbs, grapes, and fresh soups) • Fresh juices • Dairy Products (milk, eggs, yogurt, cream cheese, cottage cheese) • Fresh chicken products • Fresh ground beef, fresh steaks, boxed beef products • Frozen buttermilk biscuit dough • Refrigerated dressings • Ice Cream • Any cooler items that have been out of the Contractor's possession (Ex: the date of return does not match the date on the pick sticker) • Cooler products that are no longer cold (above 45° F) • Products that are excessively damaged • Frozen items with excessive evidence of thaw/refreeze • Frozen items with excessively damaged packaging <p><u>Recall Procedures:</u></p> <p>In the unlikely event that a Hospital Purchasing Service (HPS) Member purchases a product that is involved in a manufacturer recall, the Member's Contractor Customer Service/Chain Account Representative will contact them by phone, fax or email with an urgent product recall notice. A subsequent mailing detailing the recall and the steps to follow regarding the recalled product will follow this notice.</p> <p>For everyone's protection, the Contractor requests that any HPS Member call their representative for clarification if they hear of a product recall and suspect that their inventory may be involved.</p> <p><u>Nutrition Resource Center (NRC):</u></p> <p>The Contractor's Nutrition Resource Center (NRC) offers HPS Members education from a team of highly qualified nutrition experts, including four registered dietitians. The team at the NRC will be a practical resource for addressing the HPS Member's nutrition and food safety issues.</p>
1.3 Incentives
<p><u>VENDOR REBATE SYSTEM:</u></p> <p>The Contractor will enroll HPS Members in all vendors rebate and coupon programs set up by the vendors. They will receive a usage report and original coupon that they must send to the vendor at the end of the rebate period highlighting appropriate vendors. Monies</p>



will be refunded to HPS Members in the form of a check from the vendor sponsor.

Manufacturers that have Contracts and/or allowances already in place with HPS may decline to reimburse a rebate or coupon redemption at their discretion per the criteria on the original coupon.

PERFORMANCE INCENTIVES:

The Contractor offers the following weekly volume incentive program to committed* Healthcare Foodservice Members during the Contract period. Committed Members (as defined below) will receive their rebate semiannually (July and January). They are based on average weekly purchases during each six-month measurement period. This volume does not include the commodity Boxed Beef category or Proprietary Products. As an option, rebate checks will be available for those HPS Members purchasing over \$5,000.00 per week.

Boxed Beef products are raw (uncooked), untrimmed, typically multiple pieces in a case that come with variable weights (called a catch-weight item in distribution, and typically weigh between 55# or more (per case weight).

Proprietary Items are items which are not available to all HPS Members and have actually been brought into stock for a particular HPS Member. These items are coded for HPS Members only.

VOLUME COMMITMENT INCENTIVE PROGRAM:

PURCHASING LEVEL	% SEMI ANNUAL REBATE
\$25,000 weekly average	4.0%
\$22,500 weekly average	3.75%
\$20,000 weekly average	3.5%
\$17,500 weekly average	3.25%
\$15,000 weekly average	3.0%
\$12,500 weekly average	2.75%
\$10,000 weekly average	2.5%
\$ 7,500 weekly average	2.0%
\$ 5,000 weekly average	1.5%
\$ 4,000 weekly average	1.0%
\$ 3,000 weekly average	.75%
Below \$3,000/ wk avg	.50%

Volume rebates are based on weekly average volume not drop size.

Rebates can be grouped together for multi-unit accounts.

The Contractor reserves the right to deduct any and all finance charges that may accrue on an individual nine digit customer number before issuing a volume commitment incentive or any other HPS rebate.

***A committed HPS Member is defined as a single nine-digit HPS Member number that has signed the Contractor / HPS Contract #51 Commitment Form and is complying with the terms of that form. See attachment A - Contract #51 Commitment Form.**

SYSTEMS ADVANTAGE PROGRAM:

Systems Advantage is an additional program available to Contract #51 committed* Healthcare HPS Members. **In addition to the Volume Commitment Incentive Program, the Contractor will extend an additional 1% (one percent) rebate on all purchases (excluding Boxed Beef) to System Advantage HPS Members.** Participation in the Systems Advantage rebate is accessed by committing to the purchase of Contractor Cleanpower and Beverage Systems, Liners, Contractor Disposables, Produce and Tabletop Items. These product categories represent numerous HPS agreements in addition to Contract #51.

This program will provide the benefit of an additional rebate of 1% to the basic HPS program regardless of purchasing level.

HPS members who utilize this program are effectively committing 90% of their available purchases to this Contract. Therefore, additional incentives for participating in Systems Advantage will include:



An accelerated rebate timetable of 90 days (Quarterly Calendar)

And

Contractor Marketplace five percent (5%) Discounts Cards for all *Systems Advantage* Facility Employees

HPS Members will enjoy the benefits of the Systems Advantage (SA) program by committing in writing and complying with the requirements of the program. A signed commitment form must be in the Contractor Agreements Department (Attn: Lindsay Holwerda, Mail code 12005-76257) **before** the additional 1% rebate can be accrued toward the HPS Member's account. Systems Advantage becomes effective on receipt of the signed commitment form in the Contractor Agreements Department. Each 9-digit account number must have a signed form on file for the rebate to be paid out. The Conditions of Volume Commitment Incentive Program apply to the Systems Advantage program.

BRAND LABEL INCENTIVE PROGRAM:

The Contractor offers HPS Members the following allowance on its entire line of "Contractor" Branded Products. If any additional Contractor Brand Products are added, they will automatically be valid under the terms of this agreement. The Contractors' Private Label Rebate is designed to embrace Efficient Foodservice Response (EFR) initiatives by eliminating unnecessary costs and passing the savings onto the Committed HPS Members. Participation in the Contractor's Private Label Rebate Program simplifies the way the Contractor can do business and allows the Contractor to deliver the right products, at the right time in the proper condition, at the right price for the appropriate application.

The Contractor will track all Committed HPS Healthcare Members whose quarterly purchase volume exceeds \$10,000.00 from all Contractor divisional distribution centers and establish the percentage of Contractor Brand dollar purchases relative to total dollar purchases by the individual Committed HPS Member facility. The Contractor will pay the Contractor Brand Private Label Rebate on the percent of Contractor Brand Product purchases made by the Committed HPS Member in accordance with the Contractor Private Label Rebate Matrix. This allowance is calculated and rebated directly by Contractor to the Committed HPS Member.

The Contractor is offering the following allowance on "Contractor" Brand Products. This rebate is based on quarterly volume and will be paid out in credit memo format on a quarterly basis. **The baseline to receive the rebate is 46% Contractor Branded product mix.**

When an individual facility hits that 46% target level for the quarter plus meets the minimum volume requirement, they will become eligible to receive the commensurate rebate percent to their volume of the Contractor's Branded products.

All Contractor Branded products are included and there are no exceptions where an allowance may already be in place. Contractor Core Brands include the *Contractor Signature*, Contractor, and *Kitchen Essentials*. Gordon Food Service Exclusive Brands include *Markon*, *Array Chemicals*, *Primo Gusto*, *Natural Choice (Fruits and Juices)*, *Mosaic (Coffee)*, *Black Angus Beef*, *Brickman's*, *Sienna Bakery*, *Cattleman's Reserve*, *Hearthstone Classics*, *Pepper Mill*, *Trade East*, *Triumph*, *Gran Sazon* and *Davis Creek*.

NOTE: If any additions or deletions are made by Contractor, a Change Notice request will need to be processed.

<u>Contractor Brand %</u>	<u>Rebate %</u>
46.00-48.99%	.25%
49.00-51.99%	.50%
52.00-54.99%	.75%
55% -up	1.00%

Example: HPS Member purchases \$100,000 total volume from the Contractor through HPS program. Of that volume, 50% is Contractor label product. The rebate for 50% is a half percent (.50%). The Member would receive a credit memo for \$250.00. (\$100,000 X 50% [Contractor label %] = \$50,000 [eligible for the half percent credit] = \$250.00.

2. Service Levels

2.1 Delivery Time Frames

ORDERING AND DELIVERY: The Contractor will offer the following ordering and delivery schedules to the HPS Members.

Skip Day Deliveries

There will be one (1) working day between the day the order is placed and the day the order is delivered. Each individual Member will work with Contractor Sales and Sales Service to put together the most efficient and effective delivery schedule for each location.

The following schedule outlines Skip Day ordering:



Order Day	Delivery Day
Monday	Wednesday
Tuesday	Thursday
Wednesday	Friday
Thursday	Monday
Friday	Tuesday

Two Day Lead (TDL) Delivery Items

Certain slower moving items are only available only on a skip day basis. These are referred to as TDL items. These items are not available to add to the order and will be listed on the front page of the order guide for quick reference.

Additions to The Order

Any add-on orders must be phoned in by 11:00 AM Eastern Time on the day prior to the day that the order is delivered. The Contractor will make every effort to accommodate the request; however, additions cannot always be accepted because of limited space on the trucks. If the truck is filled to capacity, the Contractor Representative will alert the HPS Member at the time of the call, or will notify the HPS Member as soon as they are informed of the issue by the transportation department.

Substitutions

The Contractor will not make any substitution or back order without the approval of the HPS Member.

The Contractor's electronic order entry system and/or the Contractor Representative will notify the HPS Member in the event that an item is temporarily out-of-stock. Together, they can take the necessary steps toward approval of a substitution. With HPS Member consent, the substitution will be ordered in place of the regular item.

ELECTRONIC CAPABILITIES:

Ordering System

The Contractor has designed an Internet-based ordering system that includes:

- Placing an order
- Viewing an order
- Checking an account balance
- Paying invoices

The ordering system allows online account management while simultaneously providing access to other useful resources. Additional features include e-Zines, Daily Tips, Cookbooks, a Resource Library, a Calendar of Events, and Articles on Practical Business Solutions. HPS Members also have a "Contract icon" available to them on the Contractor ordering system. This icon highlights the HPS negotiated savings at the item level and helps direct the Member to utilize the manufacturer's Contract to bring additional savings to their bottom line. This feature is only available on the Contractor's ordering system.

2.2 Reporting

The State may periodically request reporting to show usage by agency and/or location being serviced.

Per Public Act 431 of 1984, as amended (Section 251a(1)), The State must report on the purchase of recycled products every year. This report will need to include, but not limited to, total State of Michigan dollar purchases for specified products, dollar amount and percentage of specified product with recycled content.

EDI - The Electronic Data Interchange (EDI) capabilities allow for inter-company computer-to-computer exchange of business documents in standard formats. The Contractor is able to produce reports in a customized file layout to be transferred electronically. Transactions available through EDI include invoices, payment/remittance advice, price/sales catalog, purchase orders, purchase order acknowledgement, and daily invoice feeds.

2.3 Other

MARKETPLACE STORES

The Contractor will to ensure that the HPS Member has access to their products on a daily basis. In the event that the HPS Member runs out of something before the next delivery, the HPS Member can visit any of the Contractor's Marketplace Stores. View a map of store locations at www.gfs.com.

The Contractor Representative will help the HPS Member secure a Continuing Service Card to use at the Contractor's stores. This card will accurately identify the HPS Member account, and provide the HPS Member and the HPS Member card bearer's access to utilize HPS Member account. The card allows the HPS Member to choose security preferences and select HPS Member invoice delivery options such as FAX or e-mail.

HPS Members will receive HPS Contractual pricing when purchasing "full case" lots at any Marketplace outlet. Any product purchased in "less case" quantities will revert to the Contractor Marketplace shelf pricing. Any purchase made at a Marketplace store is eligible for



the HPS/Contractor volume incentives and the quick pay incentive outlined in this proposal.

HEALTHCARE MARKETING SERVICES:

The following marketing services are available to HPS Members at a free or reduced cost. Contact the Nutrition Resource Center at 1-800-968-4426 for current price when applicable.

Food Safety Awareness Program –This program offers HPS Members the services and tools needed to effectively train employees in food safety.

- ServSafe Classes: 8 or 16 hour course that allows the HPS Member to gain a nationally recognized certification.
- Food Safety E-bulletin: Stay tuned to the latest food safety trends and regulations. This email newsletter will highlight the latest food safety news in your area, communicate the ServSafe schedule and advertise new tools to help manage food safety.
- CONTRACTOR Experience Food Safety
 - a) Food Safety In-services – Designed to save the HPS Member time and money while effectively training HPS Member employees, this collection of in-services is complete with pre and post test, attendance sheets, outlines, activity ideas, certificates of completion and connections to additional resources.
 - b) Food Safety and Sanitation Logs and Forms – A collection of forms and logs to help the HPS Member organize and document efforts toward securing the safety of the HPS Member’s operation. Available on CD.

NUTRITION GUIDE– This annual guide, designed for healthcare accounts, categorizes Contractor products in groupings such as low fat, low sodium, etc.

Cycle Menu Management - Designed for the Healthcare segment, this on-line menu system program is the answer to an economically priced, user-friendly complete menu system.

Features of the CMM include:

- Recipe management (1500+ recipes included)
- Menu Management (CONTRACTOR Menu Template included)
- Cycle Menu Reporting
- Inventory
- Production
- Ordering
- Tray Card
- Menu Ticket

Menu Templates include:

- 5 Weeks Long Term Care with Alternates
- 5 Weeks Assisted Living Selective Menu/Spring/Summer and Fall/Winter Cycles
- Regular Carbohydrate Controlled Diet and Therapeutic or Consistency Modified Diet Types for non-selective menus
- Standardized Recipes w/HACCP guidelines
- Sample Emergency Menus

Healthcare In-Services - Each training includes pre and post test, attendance sheets, outlines, activity ideas, certificates of completion and connections to additional resources.

MeasureIT – Record, monitor, and analyze HPS Member expenses on a monthly basis.

Winning Themes – Creative theme meal concepts.

Healthcare Advantage - Monthly permission based e-mail and 4 times per year newsletter specific to hot topics in the healthcare industry.

Food Show with healthcare specific seminars

Operational Expertise - Revenue generating ideas, cost-control, menu concepts, and other industry concepts.

Nationally recognized seminar - Leaders available for conferences.

CONTRACTOR Technology - Available for electronic ordering.

Catalyst - A suite of value-added services that will help grow sales, control costs, utilize staff more efficiently, and comply with regulations. The services are produced by the Contractor or a trusted third party. See below for a list of services.

- Sales Building
- Cost Control
- Staffing
- Compliance



Services are subject to change.

*Negotiated and approved for HPS Member/Participants by the Food Service Administrators Advisory Committee.

3. Staffing

3.1 Contractor Representative

The Contractor must appoint (1) individual specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

HPS:

Emley Navarro
Regional Manager
800-632-4572
enavarro@hpsnet.com

Contractor:

Matt Schichtel
National Accounts Healthcare Chain Manager
800-905-1927
matt.schichtel@gfs.com

3.2 Customer Service Toll-Free Number

Customer Service

HPS:

800-632-4572

Contractor:

800-968-4164

3.3 Disclosure of Subcontracts

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

The relationship of the subcontractor to the Contractor.

A complete description of the Contract Activities that will be performed or provided by the subcontractor.

4. Pricing

4.1 Pricing

Cost is defined as manufacturer's invoice price to Contractor, plus incoming freight charges and labeling cost, less all off-invoice allowances. Incoming cash discounts to Contractor do not reduce cost. HPS will perform quarterly audits, specifically on the cost plus mechanism. (See attachment A).

For a list of the mark-up structure by category, please contact the Regional Manager at the HPS Office.

The Contractor "BACKHAULS" some products distributed. In these situations, the Contractor assigns a freight rate based on a competitive rate negotiated through common carriers.

The Contractor receives additional monies, including but not limited to, promotional allowances, volume incentives, and additional marketing funds that are not part of HPS Member cost calculations.

4.2 Price Term

Pricing is firm for a 365 day period ("Pricing Period"). The first pricing period begins on the Effective Date. Adjustments may be requested, in writing, by either party and will take effect no earlier than the next Pricing Period.

4.3 Quick Pay Incentive

The Contractor offers a 1% 10 day early pay incentive. Advanced notification to the sales person of intent to participate in this incentive must be made. After the Contractor has been notified, HPS Members may deduct 1% off payment of invoices, if the mailing is post marked within 10 days of the invoice.

5. Ordering

5.1 Authorizing Document

The State will issue a written Purchase Order. All orders are subject to the Standard Contract Terms. The Contractor must have internal controls to verify abnormal orders and to ensure that only authorized individuals place orders.

5.2 Order Verification

The Contractor must have internal controls, approved by DTMB-Procurement, to verify abnormal orders and to ensure that only authorized individuals place orders.

6. Acceptance

6.1 Acceptance, Inspecting and Testing

Acceptance of deliveries shall be based on guidelines for safe food handling practices. The State of Michigan reserves the right to accept or reject items based on the following criteria.

- **Fresh Meat, Poultry, and Seafood** – Must be at or below 41 degrees F, obtained from an approved source, and stamped with a USDA or a State department of agriculture's inspection stamp.
- **Fresh Produce** – Must be at or below 41 degrees F, obtained from an approved source, and stamped with a USDA or a State department of agriculture's inspection stamp.
- **Dairy Products** – Must be at or below 41 degrees F, obtained from an approved source, and must be pasteurized and comply with FDA grade A standards.
- **Eggs** – Must be clean and unbroken. Shell eggs must be received at an air temperature of 45 degrees F or lower. Liquid, frozen, and dehydrated egg products must be pasteurized as required by law and have an USDA inspection mark. Eggs must comply with USDA grade standards.



- **Refrigerated food** - Must be at or below 41 degrees F, obtained from an approved source, and properly labelled.
- **Frozen Food** – Must be frozen. Food may be rejected if fluids or liquids appear in case bottoms, water stains on packaging, or evidence of thawing and refreezing.
- **Canned Food** – Must be obtained from an approved source. No swollen ends, leaks, rust, or dents. Label can be read and attached to the product.
- **Dry Foods** – Must be obtained from an approved source. Packaging will be clean and in good condition with no signs of pest infestation.
- **Baked Goods** – Must be obtained from an approved source. Packaging will be clean and in good condition and product is not moldy.

7. Invoice and Payment

7.1 Invoice Requirements

All invoices submitted to the State must include: (a) entity (b) date; (c) purchase order number; (d) quantity; (e) description of the Contract Activities; (f) unit price; (g) shipping cost (if any); and (h) total price.

8. Additional Requirements

8.1 Hazardous Chemical Identification

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number.

The Contractor must identify any hazardous chemicals that will be provided under any resulting Contract and must notify in advance of delivery of any such items.

8.2 Mercury Content

Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. The Contractor must explain if it intends to provide products containing mercury, the amount or concentration of mercury, and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the Contractor must provide justification as to why the particular product is essential. All products containing mercury must be labeled as containing mercury.

8.3 Brominated Flame Retardants

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs in advance of delivery.

8.4 Recycled Content and Recyclability

Without compromising performance or quality, the State prefers to purchase products containing higher percentages of recycled materials. The Contractor's estimate of the percentage of recycled materials, if any, contained in each product, is as follows:

5-10% (total estimated percentage of recovered material)

5-10% (estimated percentage of post-consumer material)

0% (estimated percentage of post-industrial waste)

The State prefers packaging materials that:

- (i) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
- (ii) minimize or eliminate the use of polystyrene and other difficult to recycle materials;
- (iii) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
- (iv) provide for a return program where packaging can be returned to a specific location for recycling; and
- (v) contain materials that are easily recyclable in Michigan.

The Contractor intends to offer most packaging materials that is reused or recycled.

Attachment A

**CONTRACTOR / HPS CONTRACT #51
VOLUME / COMMITMENT INCENTIVE**

The Contractor offers this purchasing incentive to all HPS Members for the Contract period.

The HPS Member signing this agreement agrees to commit 90% of its purchasing to the Contractor (90% of dollars spent on items for which Contractor offers a choice).

In exchange for this purchasing commitment, Contractor will issue semi-annual credit memos to Members in accordance with the following schedule, based on average weekly purchases during each 6-month measurement period. As an option, rebate checks will be available to those HPS Members purchasing over \$5,000 per week.



PURCHASING LEVEL	THIS % OF PURCHASES REBATED
\$25,000/wk. Avg	4.0%
\$22,500/wk. Avg	3.75%
\$20,000/wk. avg.	3.5%
\$17,500/wk. avg.	3.25%
\$15,000/wk. avg.	3.0%
\$12,500/wk. avg.	2.75%
\$10,000/wk. avg.	2.5%
\$7,500/wk avg.	2.0%
\$5,000/wk. avg.	1.5%
\$4,000/wk. avg.	1.0%
\$3,000/wk. avg.	0.75%
Below 3,000/wk. avg.	0.50%

Timely periodic reports will keep the HPS Member advised of rebate level being earned. Rebate checks/credit memos will be issued within 30 days after each 6-month anniversary of GFS/HPS Contract 51. **All purchases from THE CONTRACTOR (except Boxed Beef), under any other GFS Contract, count as purchase volume for purposes of this calculation.**

This agreement is entered into this _____ day of __, 20_____, between Gordon Food Service, Inc. (GFS) and _____, Acct. No. ____/____/____/____/____/____/____/____/____/____.
(Account Name)

Account must be "current" (within payment terms) before volume/commitment will be paid. Any incurred finance charges will be withheld from said rebate.

For Foodservice	For Materials Management	Gordon Food Service, Inc.
BY _____	BY _____	BY _____
TITLE _____	TITLE _____	TITLE _____
DATED _____	DATED _____	DATED _____
REBATE REFERENCE:	CREDIT MEMO _____	
	CHECK _____	Purchases over \$5,000 weekly only.

Send signed copy to Dave Butka at david.butka@gfs.com or Lindsay Holwerda at lindsay.holwerda@gfs.com



Attachment A (cont.)



Systems Advantage

CONTRACTOR CLEAN POWER SYSTEMS: *At least 3 of 5 for CONTRACTOR CleanPower (Sanitation Systems)* GFS

Dish machine Products _____
General Kitchen Cleaning Products Waxes _____
and Floor Care Products Laundry Cleaning _____
Products Housekeeping & Janitorial _____
Supplies _____

CONTRACTOR BEVERAGE SYSTEMS: *All CONTRACTOR Beverage Systems*

All Coffee, Teas, Cocoa _____
All Dispensed Juices _____
Trayline Beverages (Ready to Drink) _____
Cafeteria Line (If Available) _____
Catering (If Available) _____

CONTRACTOR DISPOSABLE PRODUCTS: *At least 5 of 6 + liners for Disposable Products (Plastic, Foam, Paper)*

Foam Plates, Cups, Containers, Bowls _____
Paper Cups, Plates, Bowls, Food Trays _____
Facial Tissue _____

CONTRACTOR PRODUCE AND DAIRY:

Produce _____
Dairy _____

CONTRACTOR TABLETOP: *Utilize all for maximum advantage*

Tabletop Contract - china, flatware, trays, temperature maint. systems Insulated Ware Contract - mugs, bowls, dome covers, traymats Rubbermaid Contract - total Rubbermaid line _____

Account Name: _____ Account #: _____ / _____ / _____ / _____ / _____ / _____ / _____

HPS Member Commitment: _____
Name (Title)

Sales Rep.: _____ Branch Management: _____

Date: _____ Please return to Dave Butka at david.butka@gfs.com
or Lindsay Holwerda at lindsay.holwerda@gfs.com

*NOTE: Items under this attachment are to only be purchased from Contractor if the item is not offered on another contract.