# **USDA FOODS PROGRAM**

# **TEMPLATE AGREEMENT BETWEEN SCHOOL FOOD AUTHORITY AND COMMERCIAL DISTRIBUTOR OF**

# **USDA FOODS IN WISCONSIN**

SCHOOL FOOD AUTHORITY (SFA) NAME:

SFA ADDRESS:

AGENCY CODE:

COMMERCIAL DISTRIBUTOR NAME:

1. **GENERAL INFORMATION**

The purpose of this agreement is to arrange with a commercial distributor (herein referred to as distributor) for the handling, storing, staging, and delivery of USDA Foods. This agreement excludes further-processed USDA Foods obtained through the direct diversion of bulk USDA Foods. USDA Foods will include refrigerated, frozen, and dry food items. The distributor agrees to comply with federal regulations including policy and federal/state policy and instructions issued by the Wisconsin Department of Public Instruction (DPI). The applicable regulations are 7 CFR 210 (National School Lunch Program) 7 CFR 250 (Food Distribution Program), and applicable procurement and contracting regulations in 2 CFR Part 200 (the Super-Circular).

1. **DPI AGREES TO:**

A. Provide distributors with the following information:

* 1. For each participating SFA with whom the distributor has an agreement, a detailed list of USDA Foods requested for the upcoming school year. The list will include: USDA material identification (ID), ordered quantity, ordered unit of measure, and requested delivery month.
  2. Monthly, the DPI will provide a detailed list of all USDA Foods to be distributed to each participating SFA. This list will be for the upcoming month’s deliveries. This list will include: USDA material ID, USDA Foods description, quantity, SFA ID, SFA name, and delivery month.
  3. Monthly, the DPI will also provide a report listing the total quantities to be picked up from the warehouse and distributed to SFAs. This report will include: USDA material ID, USDA Foods description, total quantity, total weights, and delivery month.
  4. The lists mentioned in numbers 1-3 above excludes further processed USDA Foods obtained through the direct diversion processing option.

B. The DPI will be responsible for costs associated with warehouse storage and handling during the assigned month of distribution (e.g., if SFA requests product for September distribution, DPI will pay the warehouse storage and handling costs until September 30).

**III. THE DISTRIBUTOR AGREES TO:**

1. Be properly authorized through the Wisconsin Department of Transportation and the United States Department of Transportation. Distributor must be in compliance with Federal Motor Carrier Safety regulations.
2. Comply with applicable regulations (7 CFR 210 and 250) and federal/state policy and instructions issued by DPI.
3. Comply with applicable procurement and contracting regulations (2 CFR Part 200) and shall in no way enter into an agreement with a SFA or participate in activities that are in conflict with SFA program compliance responsibilities.
4. Deliver all USDA Foods allocated by DPI to the SFA including further-processed end products (includes further-processed end products only if the SFA is participating in the state-processing program and not in the direct diversion processing program).
5. Sign a Memorandum of Understanding (MOU) with DPI to participate in commercial distribution of USDA Foods.
6. Pick-up, at a minimum of monthly, the SFA’s USDA Foods from the designated state-contracted warehouse (see Attachment A for further details regarding the designated state-contracted warehouse pick-up location).
7. Abide by the following transfer of title requirements:
8. Distributor must give a minimum of 48 hours notice to the designated warehouse to set dock appointments.
9. At the time the distributor picks up an SFA’s USDA Foods, a transfer of title will occur to the SFA. The distributor shall be financially liable for the value of each SFA’s USDA Foods in the distributor’s possession. The distributor will inspect each pallet of USDA Foods for damages and accuracy before removing them from the warehouse.
10. Full pallet ordering and removal from the state-designated warehouse is required. This is to prevent a distributor from breaking down large quantity items into smaller orders. There will be no additional charge for partial pallets if the distributor picks up the entire authorized quantity of USDA Foods for the month. This will allow for identification of USDA Foods, in the event of a USDA Foods Recall. Partial pallets will be allowed when split between distributors.
11. If the distributor picks up product in full truck load increments, the state-designated warehouse will not charge the distributor an order withdrawal fee. A full truck load equates to the full authorized quantity of USDA Foods for the month. Therefore, if the full authorized quantity of USDA Foods is less than a full truck load, there will be no withdrawal fee if the distributor takes the full authorized quantity of USDA Foods at one time. However, if the full authorized quantity of USDA Foods for a distributor is more than one full truck load, but the total does not equal a full truck load increment; there will be no withdrawal fee if the distributor takes the full authorized quantity of USDA Foods at one time (within the same business day during normal warehouse business hours).
12. If the distributor picks up less than a full truck load of product, the state-designated warehouse may charge the distributor an order withdrawal fee. The state-designated warehouse will bill the distributor directly for any applicable order withdrawal fee for pick-up quantities of less than a full truck load.
13. The distributor must pick-up USDA Foods from the state-contracted warehouse by the last day of the distribution month that the SFA requested the product (e.g., if an SFA orders USDA Foods to be delivered to the state-contracted warehouse in September, the distributor has until September 30 to pick-up those USDA Foods). If USDA Foods are not removed from the state-contracted warehouse by the last day of the distribution month that the SFA requested the product, the warehouse will bill the distributor for the additional storage cost. At this time, products will be transferred into the distributor’s storage account on behalf of the SFA. Additional storage charges resulting from the distributor not picking up the product by the last day of the distribution month that the SFA requested the product are the responsibility of the distributor and will not be passed on to the SFA.
14. Pallet exchange with the state-designated warehouse is required. Pallets must be Grade “A”, four-way pallets, 40” x 48.” If pallets do not meet this specification or are in poor condition, the state-designated warehouse may establish a pallet account and invoice the distributor accordingly.
15. The distributor may request the state-designated warehouse to have products palletized; palletization refers to requests for special configuration of a pallet. All products will come on pallets and you will only be charged if you request the product to be palletized in a special configuration. If requested, pallets shall conform to the following:
    1. Manufacturers standard 40” x 48” GMS partial 4-way shipping pallets are acceptable.
    2. Maximum height: 7’6” (including pallet)
    3. Maximum weight: 3,200 pounds (including pallet)
    4. Pallets are to be securely banded or shrink wrapped.
    5. Pallet exchange is required with all warehouses and will be exchanged for like pallets.

9. If distributor requests the state-designated warehouse to have products palletized, the warehouse will charge the distributor directly for the cost of palletizing product.

1. If product is in storage at the distributor greater than 30 days beyond the end of the assigned distribution month, the SFA must accept the product or find another eligible SFA served by the distributor to accept the product. After 30 days storage beyond the end of the assigned distribution month, the distributor must contact the SFA to determine delivery destination of the product.

I. Abide by the following storage and distribution requirements:

1. At all times, the distributor facilities, including all storage areas, and transportation equipment shall be in compliance with the United States Food, Drug and Cosmetic Act and their State’s Department of Agriculture food inspection laws.
2. At all times, food must be stored at appropriate temperatures and rotated using First-in, First-out procedures.
3. The distributor shall not store agricultural items, chemical products, or products that may be harmful to the quality of the USDA Foods anywhere near these USDA Foods.
4. The distributor will segregate all USDA Foods inventory from commercial inventory.
5. The distributor will assign an individual SKU to all USDA Foods products.
6. The distributors will include USDA Foods items on order guides for the SFA.
7. Substitution for a USDA Foods product with a commercial equivalent product (equal in grade and quality) is only allowable with prior approval from the SFA.

J. Have the following capabilities:

1. Distributor shall have the capacity to receive and accommodate information from the DPI through computer software/hardware that is Internet accessible.

2. Distributor shall have the capacity to receive multiple electronic files.

3. Distributor must have a system in place to allocate USDA Foods by customer.

4. Distributor must have the capability to number and track the allocation of USDA Foods delivered within the duration of the agreement with the SFA.

5. Distributors shall provide, upon request by the SFA or DPI, an over, short and damage report.

K. Comply with food alert procedures including:

1. Distributor shall follow procedures established by the DPI in compliance with USDA Foods Recall Procedures and [Wisconsin USDA Foods Recall Procedures](https://dpi.wi.gov/school-nutrition/usda/hold-recall). The SFA shall notify the distributor within 24 hours, or by the end of the next business day, of any USDA Foods holds or recall notifications.

2. Any product involved in a USDA Foods Recall will not be distributed or disposed of without prior DPI approval.

3. In the event of a USDA Foods recall, payment terms shall be established between the DPI and all parties involved.

L. Provide proof of adequate (sufficient to cover the highest inventory month) insurance or bond for coverage of loss of USDA Foods. The distributor shall reconcile any overage, shortage, and damaged USDA Foods product with the SFA at time of delivery. Replacement by the distributor of USDA Foods can be made with:

*(SFA to place check in SFA-preferred replacement method)*

□ equal or better commercial product (grade and quality)

□ payment for the full USDA Foods value, including any storage and handling fees that the SFA has paid to the State and any processing fees.

M. Representatives of the SFA, DPI, USDA, Office of the Inspector General, and the General Accounting Office shall have the right to inspect or audit during distributor’s normal working hours. At a minimum, the right of review and audit shall include:

1. USDA Foods in the possession of the distributor.

2. The facilities used in handling, storing, and transporting USDA Foods.

3. Procedures used by the distributor in carrying out the requirements of the agreement.

4. Recordkeeping required by this agreement.

5. When requested, the distributor shall furnish representatives with samples of USDA Foods product.

N. Conduct a year-end physical inventory and reconciliation at the distributor’s storage facility jointly with the SFA, or at a minimum the distributor will conduct a year-end physical inventory and reconcile any discrepancies found between the distributor-conducted physical inventory and the SFA’s records.

O. Fulfill the contract with the SFA at the originally negotiated price and contract terms, if SFA contracts with a Food Service Management Company (FSMC) or Food Vendor for their meal service and the SFA later terminates the contract with the FSMC or Food Vendor.

P. In accordance with Federal civil rights and law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, include the required Nondiscrimination Statement in all applicable contracts.

Q. Comply with 2 CFR Part 200.213, Executive Order 12549, Suspension and Debarment (Non-procurement). The SFA will not enter into contracts in excess of $25,000 with debarred, suspended or voluntarily excluded entities until such time as the debarment, suspension or voluntarily exclusion is lifted. The Commercial Distributor agrees to sign Attachment B certifying that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, are currently debarred, or suspended by a federal agency.

**IV. AGREEMENT TERMINATION**

The SFA may terminate this agreement immediately at the option of the SFA for noncompliance of the Agreement or if any right in favor of the SFA is threatened or jeopardized by the distributor. Disposition of the USDA Foods inventory with the distributor or payment of value thereof shall include the full value of the USDA Foods. Full value includes any processing fees and costs paid to the State. If the SFA terminates the agreement without cause, the SFA bears the cost of transferring/removal of all remaining USDA Foods from the distributor. If the SFA terminates the contract with cause, or if the distributor terminates the contract without cause, the distributor bears the cost of transferring or removing all remaining USDA Foods.

SFA to complete:

**V. GENERAL REQUIREMENTS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ requests proposals for the distribution of USDA Foods, allocated

(SFA name)

through the SFA’s participation in the National School Lunch and USDA Foods Distribution Program, for *school year 20\_\_\_-\_\_\_beginning on July 1, (20\_\_\_) and ending June 30, (20\_\_\_)* with up to \_\_\_\_1-year renewals.

Commercial distributor must meet a 250 case minimum estimated monthly pick-up total by state-designated warehouse pick-up location. Therefore, awarded agreement resulting from this procurement is contingent upon meeting this minimum 250 case requirement.

##### **A. Categories of USDA Foods**

##### USDA Foods:

All meat products, egg products, fruits and vegetables (frozen, dried and canned)

Dairy (cheese and nonfat dry milk), peanut butter and nuts, oils, grain products such as flour, rolled oats and cornmeal

This agreement includes re-processed USDA Foods?

\_\_\_\_\_\_\_\_No \_\_\_\_\_\_\_Yes

##### **B. USDA Foods Usage Profile**

|  |  |
| --- | --- |
| USDA Foods Type | Estimated Annual Cases |
| Dry | \_\_\_\_\_\_\_\_\_\_ |
| Frozen/Refrigerated | \_\_\_\_\_\_\_\_\_\_ |

**C. Pricing Method**

The required method is fixed fee per case.

1. **Pricing Terms**

Upon delivery of USDA Foods covered in this agreement, the distributor must provide an invoice, itemizing the negotiated fee for service. Any substitution of product due to distributor error will be negotiated on the invoice and billed at the negotiated USDA Foods fee for service.

Additional negotiated costs/credits to be invoiced on a monthly basis.

Are these proposed prices contingent upon a concurrent prime vendor contract with the SFA?

\_\_\_\_\_\_\_\_No \_\_\_\_\_\_\_Yes

##### If YES proposed price is contingent upon a concurrent prime vendor contract with the SFA, pleaseindicate the fixed fee per case if commercial distributor is NOT awarded the prime vendor contract:

##### **E. Delivery Type:** [tailgate (to the end of the truck), in-house (in the door), or full-service]

##### *(SFA to indicate below desired delivery type)*

##### *The following type of delivery type is required:*

##### **F. Delivery Location(s)**

*Delivery is required at the following locations:*

**G. Delivery Frequency** (weekly, bi-monthly, monthly)

*The following delivery frequency is required:*

**H. Payment Terms**

SFA will *pay within \_\_\_\_ days from receipt* of the weekly/monthly invoice/statement, for delivered products only. (circle one) (circle one)

**Additional Requirements**

|  |
| --- |
|  |

Distributor to complete:

**VI. SPECIFIC AGREEMENT REQUIREMENTS**

**A. Delivery Fees**

1. USDA Foods Dry Delivery Fee $\_\_\_\_\_\_\_\_\_\_per case

2. USDA Foods Frozen/Refrigerated Delivery Fee $\_\_\_\_\_\_\_\_\_\_per case

**B. Extended Storage**

1. Additional Monthly Storage Available: \_\_\_\_\_\_No \_\_\_\_\_\_Yes

If yes, how long? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fee? \_\_\_\_\_\_\_\_\_\_\_\_\_\_per case

2. Additional Summer Storage Available: \_\_\_\_\_\_No \_\_\_\_\_\_Yes

(June through August)

Fee? \_\_\_\_\_\_\_\_\_\_\_\_\_\_per case

**C. Delivery Drop Size**

Minimum delivery requirements per drop (including both commercial and USDA Foods):

\_\_\_\_\_\_\_No \_\_\_\_\_\_\_Yes

If yes: # cases\_\_\_\_\_\_\_\_\_\_\_

**D. Delivery Discounts**

Drop size discount: \_\_\_\_\_\_\_No \_\_\_\_\_\_\_Yes

If yes describe:

|  |
| --- |
|  |

**E. Additional Requirements**

|  |
| --- |
|  |

DISTRIBUTOR TO COMPLETE:

FIRM NAME

FIRM ADDRESS

SIGNATURE

(Of official authorized to sign on behalf of company)

PRINTED NAME

TITLE

DATE

CONTACT NAME

PHONE NUMBER

E-MAIL

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SCHOOL FOOD AUTHORITY TO COMPLETE:

SIGNATURE

(Of authorized representative)

TITLE

DATE

**ATTACHMENT A**

All USDA Foods covered through this agreement will be received and initially stored at one of the two state-contracted warehouse facilities.

The following are the two state-contracted warehouse facilities:

Northern Region:

Central Storage & Warehouse – Eau Claire

Dry Storage: 800 Wisconsin St., Bldg 18

Freezer/cooler: 2650 Fortune Drive

Eau Claire, WI 54703

Contact: Deb Kressin

Phone: 715-874-2951

Southern Region:

Central Storage & Warehouse - Madison

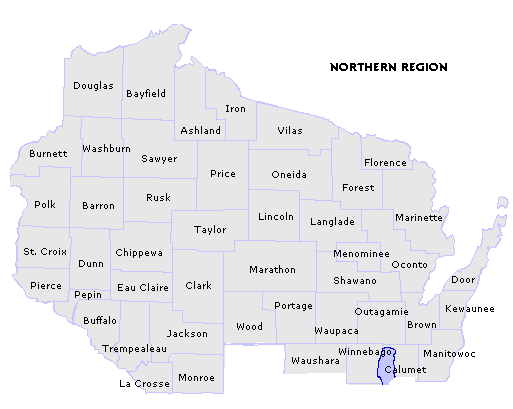
4309 Cottage Grove Road

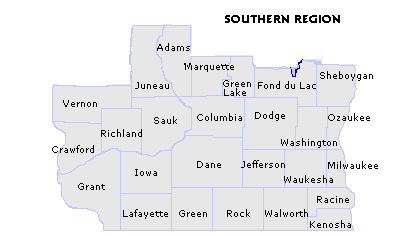
Madison, WI 53716

Contact: Dan Fritsch, General Manager

Phone: 608-221-7611

For each SFA that has selected a commercial distributor for delivery of the USDA Foods covered through this agreement, the State will designate a warehouse pick-up location. The State is divided into two regions, the Northern Region and the Southern Region, as indicated on the below map. Each region of the State contains one state-contracted warehouse facility that services all SFAs located in that region. Since the two regions are designated in the state warehouse contract, the designated warehouse pick-up locations **cannot** be modified.





**ATTACHMENT B**

# SUSPENSION AND DEBARMENT CERTIFICATION

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion -

**Lower-Tier Transaction**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants’ responsibilities. The regulations were amended and published on August 31, 2005, in the *Federal Register* (pages 51865-51880). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

**(Before completing certification, read instructions on next page.)**

1. The prospective lower-tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower-tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Organization Name PR/Award Number or Project Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name(s) and Titles of Authorized Representative(s)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signatures Date

# INSTRUCTIONS FOR SUSPENSION DEBARMENT CERTIFICATION

1. By signing and submitting this form, the prospective lower-tier participant is providing the certification set out on the previous page in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower-tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower-tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower-tier participant further agrees by submitting this form that he or she will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower-Tier Covered Transactions,” *w*ithout modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the System for Award Management (SAM) database.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.