

AGREEMENT BETWEEN WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION AND SCHOOL FOOD AUTHORITIES PARTICIPATING IN THE USDA FOODS PROGRAM AND CONTRACTING WITH COMMERCIAL DISTRIBUTORS

Instructions: This document is for read-only purposes. This document describes the requirements of contracting with a commercial distributor and the USDA Foods Program.

SFAs will be required to login to the Wisconsin USDA Foods Ordering System and accept these terms in the Contract Form under the Application. By clicking “Accept”, the SFA agrees with the following terms and conditions.

I. GENERAL INFORMATION

By clicking on the ‘Agree’ button located at the end of the agreement, the School Food Authority (SFA) and the Wisconsin Department of Public Instruction (DPI) agree to the following terms and conditions for distribution of USDA Foods by a commercial distributor. Furthermore, the purpose of this agreement is to facilitate the distribution of USDA Foods Direct Delivery and State Processing Products to SFAs in Wisconsin who participate in the National School Lunch Program (NSLP) and seek to utilize a commercial distributor, herein after referred to as “Commercial Distributor,” for delivery of USDA Foods. The SFA agrees to administer the USDA Foods Program in accordance with federal regulations including policy and instructions issued by DPI. The applicable regulations are 7 CFR 210 (NSLP), 7 CFR 250 (USDA Foods Program), and applicable procurement and contracting regulations in 2 CFR Part 200.

This agreement excludes further-processed USDA Foods obtained through the Direct Diversion of bulk USDA Foods.

II. AGREEMENT/POLICY STATEMENT

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

1. Allocate USDA Foods products, to the extent available at the designated state-contracted warehouse(s), to the SFA, based on SFA’s monthly requests, for the Child Nutrition Programs covered by this agreement.
2. Provide the Commercial Distributor with the following information:
 - a. For each participating SFA with whom the Commercial Distributor has a contract, a detailed report of the USDA Foods requested for the upcoming school year. The report includes: material identification (ID), USDA Foods description, ordered quantity, and requested delivery month.
 - b. For each Commercial Distributor that has a signed Memorandum of Understanding (MOU) with DPI, the DPI provides login access to the WI USDA Foods Ordering System.
 - c. Monthly, from September to May, the DPI will generate a USDA Foods distribution to SFAs report for the Commercial Distributor to download. The distribution report is based on SFA’s monthly orders from September to May. The distribution report includes: product material ID, USDA Foods description, quantity of cases per SFA, SFA ID (Agency Code), SFA name, and delivery month.

- d. Monthly, from August to April, the DPI will generate a warehouse release authorization report for the Commercial Distributor to download. The warehouse release report lists the products and quantities that the Commercial Distributor must pick up from the state-designated warehouse(s). The warehouse release report includes: warehouse name, product material ID, USDA Foods description, storage type, quantity of cases per product, gross weights, and delivery month.

THE SCHOOL FOOD AUTHORITY (SFA) AGREES TO:

1. Accept, in as large quantities as may be efficiently utilized in the food service program, the USDA Foods requested by the SFA and allocated by DPI each month.
2. Reimburse DPI for the administrative, storage, and processing fees associated with the receipt of the USDA Foods.
3. Promptly report to DPI any complaints or irregularities pertaining to the USDA Foods received, including items received in unusable condition.
4. Comply with the applicable regulations and amendments and with any instructions or procedures issued by DPI, including the use of appropriate federal procurement procedures when contracting with a Commercial Distributor.
5. Contract with a Commercial Distributor for no longer than a one-year period. The SFA and Commercial Distributor Contract may be renewed at the option of both parties for a maximum of four additional one-year periods.
6. Contract only with a Commercial Distributor properly authorized through the Wisconsin Department of Transportation and the United States Department of Transportation. The Commercial Distributor must follow Federal Motor Carrier Safety regulations.
7. Contract only with a Commercial Distributor agreeing to comply with applicable regulations (7 CFR 210, 7 CFR 250 and 2 CFR Part 200) and federal/state policy and instructions issued by DPI.
8. Contract only with a Commercial Distributor that has signed a MOU with the DPI to participate in commercial distribution of USDA Foods.
9. Contract only with a Commercial Distributor agreeing to meet a 250 case minimum estimated monthly pick-up total by state-designated warehouse pick-up location. This minimum of 250 cases total includes all USDA Foods combined, for all SFAs serviced by that Commercial Distributor, out of that state-designated warehouse pick-up location.
10. Contract only with a Commercial Distributor agreeing to deliver all USDA Foods items allocated by DPI to the SFA.
11. Contract only with a Commercial Distributor agreeing to pick up the SFA's USDA Foods from the state-designated warehouse. See Attachment A for further details regarding the designated state-contracted warehouse pick-up locations. The Commercial Distributor may deliver USDA Foods directly to the SFA or store the USDA Foods for later delivery to the SFA.
12. Contract only with a Commercial Distributor agreeing to abide by the following transfer of title requirements:

- a. The Commercial Distributor must give a minimum of 48 hours notice to the state-designated warehouse to set dock appointments.
 - b. At the time the Commercial Distributor picks up the SFA's USDA Foods, a transfer of title will occur to the SFA. The Commercial Distributor shall be financially liable for the value of the SFA's USDA Foods in the Commercial Distributor's possession. The Commercial Distributor is responsible for inspecting each pallet of USDA Foods for damage and accuracy before removing them from the state-designated warehouse.
 - c. All products are distributed to the Commercial Distributor by the state-designated warehouse on pallets. Pallets shall conform to the following:
 - 1. Manufacturers standard 40" x 48" GMS partial 4-way shipping pallets.
 - 2. Maximum height: 7'6" (including pallet)
 - 3. Maximum weight: 3,200 pounds (including pallet)
 - 4. Pallets are securely banded or shrink wrapped.
 - 5. Pallet exchange for like pallets is required between Commercial Distributor and state-designated warehouses.
 - d. The Commercial Distributor may request the state-designated warehouse for a special configuration of palletizing. The state-designated warehouse will charge the Commercial Distributor directly for the cost of repalletizing products. If the SFA requests the product to be palletized in a specific configuration, the Commercial Distributor may charge the SFA.
13. Contract only with a Commercial Distributor agreeing to allocate all USDA Foods to the SFA within the assigned distribution month per SFA's Order in the WI USDA Foods Ordering System. To comply with this requirement, the Commercial Distributor is encouraged to pick up the SFA's Order from the state-designated warehouse by the end of the month that the Commercial Distributor receives notification that the SFA's Order is available for pick up (e.g., the DPI generates SFA's September Order by August 15 and notifies the Commercial Distributor to schedule appointments to pick up at state-designated warehouse by August 31. The Commercial Distributor must make products listed on the September Order available to SFA for delivery to SFA by allocating products during the month of September).
14. Each SFA should establish with the Commercial Distributor a storage period after which the SFA must either accept the product or find another eligible SFA served by the Commercial Distributor to accept the product. The DPI recommends that this period not exceed 30 days storage beyond the end of the assigned distribution month.
15. Contract only with a Commercial Distributor agreeing to abide by the following warehousing and distribution requirements:
- a. The Commercial Distributor must have products available for delivery by a date sufficient for delivery to SFA in the month designated for delivery in the WI USDA Foods Ordering System.
 - b. In the event USDA Foods are not picked up from the state-designated warehouse by the last day of the month designated for delivery, products will be transferred

into a separate Commercial Distributor storage account. It is recommended that the SFA and Commercial Distributor Contract clearly state that additional storage charges resulting from the Commercial Distributor not picking up the product, are the responsibility of the Commercial Distributor and will not be passed on to the SFA.

- c. At all times, the Commercial Distributor facilities, including all storage areas and transportation equipment, shall follow the United States Food, Drug and Cosmetic Act and their State's Department of Agriculture food inspection laws.
 - d. At all times, food must be stored at appropriate temperatures and rotated per inventory management best practices, such as First-in, First-out procedures, or earlier manufacture dates.
 - e. The Commercial Distributor shall not store agricultural items, chemical products, or products that may be harmful to the quality of the USDA Foods anywhere near the USDA Foods.
 - f. The Commercial Distributor will segregate all USDA Foods inventory from commercial inventory.
 - g. The Commercial Distributor will assign an individual SKU to all USDA Foods products.
 - h. The Commercial Distributor will include USDA Foods material identifications on order guides for the SFA.
 - i. Substitution for USDA Foods with a commercial equivalent product (equal in grade and quality) is only allowable with prior approval from the SFA.
16. Contract with a Commercial Distributor having the following capabilities to:
- a. receive and accommodate information from DPI through computer software/hardware that is Internet accessible.
 - b. receive multiple electronic files.
 - c. have a system in place to allocate USDA Foods by SFA.
 - d. number and track the allocation of USDA Foods delivered within the duration of the contract with the SFA.
 - e. provide, upon request by the SFA or the DPI, an over, short, and damage report.
 - f. provide, upon request, a copy of the SFA and Commercial Distribution Contract with an effective date prior to the effective date of this agreement.
17. Require the Commercial Distributor to comply with food hold and recall alert procedures including:
- a. Following procedures established by the DPI in compliance with USDA Foods Recall Procedures and [Wisconsin USDA Foods Recall Procedures](#). The SFA shall notify the Commercial Distributor within 24 hours, or by the end of the next business day, of any USDA Foods recall notifications.
 - b. Any product involved in a USDA Foods recall will not be distributed or disposed of without prior DPI approval.

- c. In the event of a USDA Foods recall, payment terms shall be established between the DPI and all parties involved.
18. Require the Commercial Distributor provide proof of adequate (sufficient to cover the highest inventory month) insurance or bond for coverage of loss of USDA Foods. In the event of such a loss, the SFA agrees to reconcile any overage, shortage, and damaged USDA Foods with the Commercial Distributor. The SFA may accept replacement for shorted or damaged USDA Foods with an equal or better commercial product (grade and quality) or may accept payment from the Commercial Distributor for the full USDA Foods value, including any handling fees that the SFA has paid to the DPI and any processing fees. It is the SFA's responsibility to ensure that they receive 100% of the USDA Foods (and/or USDA Foods value) ordered from and delivered by the Commercial Distributor.
19. Recover all USDA Foods from the Commercial Distributor or full value of the USDA Foods if the contract is terminated by either party. Full value includes any handling and processing fees paid to the DPI. The SFA agrees to negotiate with the Commercial Distributor the cost of transferring/removal of all remaining USDA Foods from the Commercial Distributor, if the SFA terminates the contract without cause. If the SFA terminates the contract with cause, or if the Commercial Distributor terminates the contract without cause, then the Commercial Distributor agrees to cover the costs of transferring or removing all remaining USDA Foods.
20. Reserve within the SFA and Commercial Distributor Contract the right of review and audit by representatives of the DPI, USDA, Office of the Inspector General, and the General Accounting Office. At a minimum, the right of review and audit shall include:
 - a. USDA Foods in the possession of the Commercial Distributor.
 - b. The facilities used in handling, storing, and transporting USDA Foods.
 - c. Procedures used by the Commercial Distributor in carrying out the requirements of the contract.
 - d. Recordkeeping required by this agreement.
 - e. When requested, the Commercial Distributor shall furnish representatives with samples of USDA Foods products.
21. Conduct a year-end physical inventory and reconciliation at the SFA's contracted Commercial Distributor's facility jointly with the Commercial Distributor. At a minimum, the Commercial Distributor must conduct a year-end physical inventory and reconcile any discrepancies found between the Commercial Distributor-conducted physical inventory and the SFA's records.
22. If SFA prepares meals for another SFA, SFA will include a statement in the joint agreement to indicate that the joint agreement agency understands and agrees to have their USDA Foods delivered by the Commercial Distributor.
23. Should the SFA no longer contract with the Food Service Management Company or Food Vendor, the SFA must either fulfill the contract with the Commercial Distributor or be able to participate in state distribution.
24. In accordance with Federal civil rights and law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, any contract that supports this agreement must also

include the required Nondiscrimination Statement and Assurance of Civil Rights Compliance.

25. Comply with 2 CFR Part 200.214, which states contractors are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as [2 CFR part 180](#). The regulations in [2 CFR part 180](#) restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards. By signing the certification statement on the form, contractor certifies that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, debarred, or suspended by a federal agency.

Assurance of Civil Rights Compliance

The SFA and contractor hereby agrees that it will comply with:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
2. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
4. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
5. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
6. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
7. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
8. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
9. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Contract.
10. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial

assistance extended to the Program applicant by USDA. This includes any Federal contract, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and contracts made in this assurance.

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

Nondiscrimination Statement

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

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

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
Program.Intake@usda.gov

This institution is an equal opportunity provider.

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
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 USDA Foods, the DPI 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 map (next page). 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 changed to another location.

