

AGREEMENT BETWEEN THE  
**KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION**  
AND  
**GORDON FOOD SERVICE**

This agreement is made by and between Kentucky Educational Development Corporation (KEDC), 904 Rose Road, Ashland, KY 41102-7104 and Gordon Food Service (GFS), 342 Gordon Industrial Drive, Shepherdsville, KY 40165. KEDC is an educational cooperative organized under the Kentucky Interlocal Cooperation Act and is considered a local public agency under the Kentucky Model Procurement Code (KRS 45A.345(11)).

This agreement commences on July 01, 2024, and will expire on June 30, 2025, with KEDC reserving the right for annual extensions as permitted by Kentucky Model Procurement Code (KRS Chapter 45A).

This agreement incorporates the Grocery RFP Terms and Conditions (PV-GROCERY-2024) and Gordon Food Service's Response by reference.

Vendor Number	10100336
Contract Number	10100336-PV-GROCERY-2024

Upon the signature of an authorized officer of KEDC and an authorized representative of the above-named company or corporation, this agreement is hereby executed.

**KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION**



\_\_\_\_\_  
KEDC Chief Executive Officer

\_\_\_\_\_  
6/21/24 08:47 EDT  
Date

\_\_\_\_\_  
Nancy Hutchinson  
Printed Name

**GORDON FOOD SERVICE**



\_\_\_\_\_  
Signature

\_\_\_\_\_  
6/24/24 14:29 EDT  
Date

\_\_\_\_\_  
Katie Northup  
Printed Name

\_\_\_\_\_  
Bid Analyst  
Title



To: Kentucky Educational Development Corporation

Thank you for including Gordon Food Service in your bid process. We appreciate the opportunity to bid on your food service needs. Attached you will find the: PV-Grocery-2024 bid that is due by 9:00 am on Tuesday 6/11/2024. Gordon Food Service's submission is subject to the terms and clarifications contained in its Bid proposal, including the enclosed Supplemental Terms and Conditions for Bid Proposals.

Please note you can access our product catalog and nutritional information through our GFS Experience on-line ordering system via [www.gfs.com](http://www.gfs.com)

Thank you for your time and your business and if you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Najee B", followed by a long horizontal flourish.



**Najee Braceful** | [Najee.braceful@gfs.com](mailto:Najee.braceful@gfs.com)

**Bid Analyst**

1300 Gezon Pkwy| Wyoming, MI 49509



## SUPPLEMENTAL TERMS AND CONDITIONS FOR BID PROPOSALS

1. **Applicability.** These supplemental terms and conditions (collectively, the “Terms”) are an integral part of Gordon Food Service, Inc.’s or any subsidiaries’ (“Gordon”) proposal (the “Bid Proposal”) provided in response to a request for proposal or similar document or request (the “RFP”) issued by a customer or a group purchasing organization or co-operative on behalf of itself and/or its members (each, a “Customer”). The Terms shall apply to all sales of goods and services (collectively, “Products”) supplied from time to time by Gordon to any Customer in connection with the RFP and Bid Proposal and any resulting contract or otherwise.

2. **Contract Terms.** By awarding the Bid to Gordon or ordering Products from Gordon, each Customer agrees that the terms of the resulting contract will be governed by and construed in accordance with the terms and clarifications included in Gordon’s Bid Proposal (including but not limited to these Terms), which will become part of the resulting contract (a “Contract”). The Contract will comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding anything to the contrary in the RFP or any purchase order or other document issued by any Customer, in the event of a conflict between or among the terms of the documents which comprise the Contract, the documents will control in the following order: the Bid Proposal, these Terms, and the RFP. Any purchase order or other document issued by any Customer containing any inconsistent or additional terms to the Contract is expressly rejected and does not serve to modify or amend these Terms or the Contract.

3. **Scope of Offer.** Gordon’s Bid Proposal is an offer to service only the school districts that Gordon serviced in the prior school year. Gordon will have no obligation to service any other school districts, notwithstanding anything to the contrary in the RFP, except and unless Gordon agrees to do so in a separate writing expressly agreeing to service one or more named school districts. Such separate writing includes, but is not limited to, an email confirmation from the Gordon Sales Manager.

4. **Warranty.**

a. Gordon warrants to Customer that all Products (a) while in Gordon’s possession or control, will be handled, stored and transported by Gordon in compliance with all applicable laws, regulations and other legal requirements, and (b) will not, while in Gordon’s possession or control, become mislabeled or adulterated, due to the act or omission of Gordon or its employees or agents, so as not to comply with all applicable laws, regulations and other legal requirements. **GORDON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM, USAGE IN TRADE, OR BY COURSE OF DEALING.**

b. Gordon does not manufacture any of the Products. The availability of Products does not indicate an affiliation with or endorsement of any Product or manufacturer. Gordon will assign to Customer all of its rights against the manufacturers and suppliers of the Products under the warranties (if any) which Gordon receives, to the extent the rights are assignable. Gordon shall provide reasonable support to Customer in the pursuit of any such warranty claims, provided that there is no additional cost to Gordon.

5. **Indemnification.** Subject to these Terms and in full replacement of any provisions in the RFP or otherwise relating to indemnification, Gordon will indemnify and defend Customer against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses, including reasonable attorneys’ fees, that are sought by any third-party from Customer arising out of: (a) any negligent or more culpable act or omission of Gordon (including any reckless or willful misconduct) in connection with its performance of its obligations under the Contract; and (b) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Gordon (including any reckless or willful misconduct). The foregoing obligation to indemnify and defend will not apply to the extent such claim or corresponding losses arise out of or result from the negligence or more culpable act or omission of Customer or its employees or agents. This Section sets forth the entire liability and obligation of Gordon and the sole and exclusive remedy for the indemnified party for any damages covered under this Section.

6. **Limitation of Liability.** In no event shall Gordon be liable under the Contract or otherwise, to Customer or any other person or entity for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, including, but not limited to, attorneys' fees, lost profits or revenues or diminution in value, arising out of, relating to, or in connection with any breach of these Terms or the Contract, regardless of: (a) whether such damages were foreseeable, (b) whether or not Gordon was advised of the possibility of such damages, and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.

7. **Excusable Delays.** Gordon shall not be liable for delays or failure to perform due, directly or indirectly, to: (a) causes beyond Gordon's reasonable control, (b) shortage of utility, facility, material or labor, delay in transportation, breakdown, including mechanical, electrical or other equipment failure, or (c) acts of God or nature, acts (including failure to act) of any governmental authority, wars (declared or undeclared), terrorist acts, strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, disease, quarantine, pandemics, and epidemics). The parties acknowledge that, as of the date hereof, the parties are aware of, and have knowledge of the pandemic and global health crisis commonly known as COVID-19 ("**COVID**"). Despite their awareness or knowledge, the parties agree COVID and its effects could constitute events that could potentially excuse delay or non-performance under this Section. The parties also waive any argument that COVID and its effects cannot constitute such events due to the parties' awareness or knowledge of COVID and its effects or that COVID and its effects were allegedly foreseeable.

8. **Firm Adjustable Pricing.**

a. The prices of the Products included in the Bid Proposal are based on Product costs negotiated with vendors ("**Product Cost**") and other factors. Gordon negotiates Product Cost for extended periods of time in an effort to keep Product prices firm. However, extenuating circumstances may result in an unexpected price increase from the vendor or require Gordon to procure Product from an alternate source who may not honor the negotiated Product Cost. In addition, interruptions in the labor market and rapid inflation make it impossible for Gordon to tender a competitive mark-up on the Product Cost without significant risk of providing the Products at a loss due to future changes. Accordingly, and notwithstanding anything to the contrary in the RFP, Contract or otherwise, the Product prices contained in the Bid Proposal are offered conditionally on Gordon's ability to pass through increased costs or operational expenses as outlined in this Section. Commencing on the date that Gordon's Bid Proposal or renewal proposal, as applicable, is submitted, the price of the Products will be recalculated and set by Gordon according to (a) the prevailing Product Cost each August, October, January and March, plus (b) the difference between the applicable bid price of the Product less the original Product Cost (the "**Fixed Fee**") adjusted for inflation annually at the time of annual renewal of the Contract. The adjustment for inflation will be determined by the increase in the Consumer Price Index for All Urban Consumers (All-Items U.S. City Average (1982-1984=100)) published monthly by the Bureau of Labor and Statistics of the United States Department of Labor ("**CPI-U**"). At the time of the annual renewal of the Contract, the last published CPI-U rate will be compared to the published CPI-U rate for the same month in the prior year. The percent increase (if any) between the two rates will determine the percent increase to the Fixed Fee.

b. Customer may elect to purchase from Gordon other Products available from Gordon's that are not included in the RFP or Gordon's Bid Proposal ("**Off-Bid Items**"). If Customer requests, Gordon will make Off-Bid Items available for ordering on Customer's order guide. Notwithstanding anything to the contrary in the RFP, Contract or otherwise, the price of Off-Bid Items will not be subject to the pricing offered in Gordon's Bid Proposal, but will instead have a separate price offered by Gordon on Customer's order guide that will be updated periodically by Gordon. Additional separate charges may apply to Off-Bid Items in connection with special orders.

9. **COVID-19 Protocols.** This Contract for supplies/products is not subject to (a) the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated as of September 9, 2021, including but not limited to any resulting administrative rulemaking, regulations, policies, or other guidance or publications (collectively, the "**EO**"), and (b) the requirements set forth in Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555 (Nov. 5, 2021) (the "**CMS Rule**") and, together with the EO, the "**Vaccination Requirements**"). Notwithstanding anything to the contrary in the RFP, Contract or otherwise, Gordon's Bid Proposal is expressly conditioned on the foregoing, and the Vaccination

Requirements and any other requirement that Gordon vaccinate its employees are expressly rejected and do not serve to modify or amend these Terms or the Contract.

10. **Additional Charges.** The prices offered in Gordon's Bid Proposal are subject to certain additional charges not included in Gordon's Bid Proposal and the prices of the Products may include one or more additional charges if the Product is: (a) ordered in less than whole case quantities (to the extent available); (b) cross-docked from a Gordon distribution center to the selling Gordon distribution center due to having weekly sales of less than 20 cases; or (c) ordered for expedited delivery and fulfilled by Gordon's affiliate, Gordon Food Service Store LLC.

11. **No Third-Party Beneficiaries; No Piggybacking.** These Terms do not and are not intended to confer any rights or remedies upon any person or entity other than Customer. Notwithstanding anything to the contrary in the RFP, Contract or otherwise, to the maximum extent permitted by applicable law, in no event will GFS be obligated to extend the terms of the Contract to any third party (commonly referred to as piggybacking), including other school districts, administrative agencies, or other governmental instrumentalities.

12. **Minimum Delivery Amount.** Irrespective of the absence of any minimum order amount or any lesser minimum order amount specified in the RFP, Contract or otherwise, the minimum order amount to receive a delivery shall be \$750.00 per order.

13. **Diesel Fuel Surcharge.** Not included in the price of the Products is a surcharge for diesel fuel that may be applied if the average cost of diesel fuel exceeds \$4.000 per gallon. The surcharge will apply to each delivery and will apply notwithstanding anything to the contrary in the RFP, Contract or otherwise. The amount of the surcharge will be \$3.00 plus \$1.00 for each \$0.50 (or part of \$0.50) that the average cost of diesel fuel exceeds \$4.500 per gallon. The average cost of diesel fuel will be determined by the U.S. Average for Retail OnHighway Diesel Price per Gallon for the continental U.S. as published by the United States Energy Information Agency, or another similar index reasonably chosen by Gordon. The average will determine the surcharge for the entire month, effective on the first Monday of the month. The average will be calculated from the published weekly average over the previous month. Gordon's fiscal calendar will determine the monthly periods.

14. **Policies and Procedures.** Gordon recognizes that Customer may have certain policies and procedures that are attached to the RFP, incorporated by reference in the RFP, or which Customer may otherwise request be acknowledged and accepted by Gordon in some other form or instrument (collectively, the "**Customer Policies**"). Gordon agrees to comply with such Customer Policies, but only to the extent that (a) Gordon has affirmatively agreed to comply with in writing, (b) the Customer Policies are limited to employee conduct or appearance while on Customer's premises and have been adequately disclosed in writing to Gordon's employees in advance; (c) the Customer Policies are consistent with the provisions contained in Section 8 of these Terms; (d) the Customer Policies are consistent with the terms and conditions contained in the Contract; (e) the Customer Policies are not contrary to and do not conflict with Gordon's own policies and procedures; and (f) the Customer Policies do not require Gordon to incur any additional costs or expenses other than what is already contemplated in its Bid Proposal for the distribution of the Products. Gordon will not be bound by any amendments, updates, or changes to the Customer Policies, unless Gordon has separately agreed in writing to comply.

15. **Substitutions; Cost Coverage.** If Gordon is required to provide a substitute for the original Product, Gordon will make commercially reasonable efforts to find a replacement Product that has generally comparable specifications and has a similar price. Notwithstanding anything to the contrary in the RFP, Contract or otherwise, the price of a substitute Product may be higher or lower than the price of the original Product. Should Gordon not be able to provide the original Product or provide an acceptable substitute Product, Customer may purchase such Product from another source for the period of time that Gordon is unable to provide the Product or an acceptable substitute. Gordon shall not be responsible for any difference in price of any Product purchased from another source or any substitute Product, or be liable for any costs, expenses, or losses incurred by Customer as a result of Gordon's breach of the Contract or its inability to supply one or more Products, notwithstanding anything to the contrary in the RFP, Contract or otherwise. Gordon makes no representation or warranty that the prices offered by Gordon are better than or more favorable than the prices offered by Gordon to any other customer. If Gordon offers a better price to another customer, Gordon shall have no obligation to match such price for Customer or issue a credit or refund to Customer, or otherwise adjust the price for Customer, if the price paid by Customer on any Product is not as favorable, notwithstanding anything to the contrary in the RFP, Contract or otherwise.

16. **Proprietary Inventory.** If Customer requests and Gordon agrees to bring into inventory any Product that is primarily purchased only by Customer at the servicing Gordon distribution center (each, a “**Proprietary Product**”), the entire inventory of such Product, as replenished from time to time by Gordon, must be purchased by Customer. In the event Customer ceases to purchase a Proprietary Product, Customer must purchase all remaining inventory of such Proprietary Product within 30 days of Gordon’s written notice to Customer. If the inventory is not purchased within 30 days, Gordon may dispose of the inventory in any reasonable manner and Customer agrees to pay Gordon the applicable bid price for each case of Proprietary Product comprising the inventory plus Gordon’s costs and expenses to dispose of the inventory.

17. **Taxes.** With the exception of any tax applied against Gordon’s income, Customer shall be solely liable and shall indemnify Gordon for any tax, levy or other governmental obligation due or arising related to the sale of Products by Gordon to Customer or otherwise arising pursuant to the Contract.

18. **Renewals.** Any renewal or extension of the Contract term must be mutually agreed to by Gordon and Customer in a written instrument signed by both parties, notwithstanding anything to the contrary in the RFP, Contract or otherwise.

19. **Termination.** Gordon reserves the right to terminate the Contract for any or no reason by providing Customer ninety (90) days’ written notice.

20. **Confidentiality.** Gordon shall have no confidentiality obligation to Customer for any information or documentation Gordon may obtain in the performance of its obligations under the Contract.

21. **Setoff.** Customer shall have no right of setoff against any sums due to Gordon under the Contract or otherwise.

22. **No Assignment.** Customer shall not assign its rights under the Contract without Gordon’s prior written consent.