

**2. TERMS OF CONTRACT:**

**2.1 EFFECTIVE DATE:**

The effective date of this contract shall be July 1, 2007. To ensure that contractual performance requirements can begin on the effective date of this contract, certain administrative provisions shall be effective immediately after signing of the contract by both parties, i.e., the Kentucky Department of Agriculture and the Contractor.

The following schedule of events is anticipated:

1.	IFB Issue Date	-	December 11, 2006
2.	Due Date for Bids	-	January 11, 2007
3.	Contract Award Announcement	-	February 1, 2007
4.	Contract Operational	-	July 1, 2007

**2.2 CONTRACT PERIODS AND RENEWALS:**

The State intends to enter into a one-year contract from July 1, 2007 through June 30, 2008 with the option to extend for four (4) additional one-year periods. It is understood and agreed that the state reserves the right to extend the contract period of term contracts covered by any contract award resulting from this bid beyond the normal expiration date of such contract not to exceed a total of sixty (60) months.

**2.3 LEGISLATION ENACTED DURING A CONTRACT:**

State or Federal laws enacted during a contract deemed as necessitating a change in payments and/or warehouse practices shall be incorporated into the existing contract as an amendment to that contract.

**2.4 AUDITS:**

State and Federal officials or any of their duly authorized representatives may inspect and inventory donated foods in storage facilities used in handling or storage of such donated foods, may inspect and audit all records, including financial records and reports pertaining to the disposition of donated foods; and may review or audit the procedures and methods used in carrying out the requirements of this contract at such reasonable time and place as may be designated by the Commonwealth.

**2.5 RECORDS AND REVIEWS:**

The Contractor as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the services.

The Contractor shall maintain records fully accounting for receipt and disposition of all USDA Donated Foods. Such records shall be maintained for three (3) years following the close of the Federal Fiscal Year to which they pertain and shall be available for review, at any reasonable time, upon request by either the USDA or Department officials. However, in instances when claim actions and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such actions or findings, and at least three years after the closure of the audit and investigation.

**2.6 PERMITS, LICENSES, TAXES, COMMONWEALTH REGISTRATION:**

The proposed Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of the United States, all states, the Commonwealth of Kentucky, and political subdivisions in which work under this contract is performed.

**2.7 PROPRIETARY DATA:**

The contract holder agrees that all USDA products, inventory records, and other records pertinent to the administration of the program are the property of the Commonwealth.

**2.8 INDEPENDENT CONTRACTOR:**

It is expressly agreed that the Contractor and any subcontractors and employees of the Contractor or any subcontractor in the performance of this contract shall act in any independent capacity and not as officers or employees of the Commonwealth.

**2.9 CONFIDENTIALITY OF INFORMATION:**

The Contractor shall treat all information, which is obtained by it through its performance under the contract, as confidential information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securement of its rights hereunder. This provision shall survive the termination of the contract.

**2.10 CONTRACTOR COOPERATION IN RELATED EFFORTS:**

Occasionally, not to exceed six times per year, a Contractor may be requested to pick up donated foods from another Contractor in an adjoining region. Pickups shall be on exchangeable pallets on a lump sum basis. (Usually pickups can be made as backhauls at the discretion of the Contractor.) Pickups shall be required only when the quantity of an item allocated to the Department by the USDA, together with the mode of inbound transportation, is inadequate for statewide coverage directly to each Contractor. Charges for such pickups shall not exceed 50 percent of the charge quoted for weekly delivery to recipient agencies.

Integrating the distribution of donated commodities into commercial distribution channels appears to offer considerable opportunity for improving the economics of the system, as well as providing a much needed improved product flow. However, for the program to be successful, a strict sense of mutual cooperation shall exist between the Contractor, food service directors, and unit managers. This program, as planned, provides for ample opportunity for maximum cooperation, but it is essential that managers of all levels be made aware of this need.

**2.11 FORCE MAJEURE:**

The Contractor shall not be liable for any excess costs to the Department if the failure to perform the contract arises out of causes beyond their control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, quarantine restriction, strikes, and freight embargoes. In all cases, the failure to perform shall be beyond the control and without fault or negligence of the Contractor. The Contractor shall take all possible steps to recover from such occurrences.

**2.12 EMPLOYMENT PRACTICES:**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin, sex, religion, age (except as provided by law), disability, political beliefs, sexual orientation, or marital or family status. The Contractor shall take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, national origin, sex, religion, age, (except as provided by law), disability, political beliefs, sexual orientation, or marital or family status. Such action shall include, but is not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this clause.

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, national origin, sex, religion, age (except as provided by law), disability, except where it relates to a bonafide occupational qualification, political beliefs, sexual orientation, or marital or family status.

The Contractor shall comply with regulations issued by the Secretary of Labor of the United States in 20 CFR 741, pursuant to the provisions of Executive Order 11758, and the Federal Rehabilitation Act of 1973. The Contractor shall be responsible for insuring that all subcontractors comply with the above-mentioned regulations.

The Contractor and its subcontractors shall comply with the Civil Rights Act of 1964, the Civil Rights Act of 1991, and any amendments thereto, and the rules and regulations thereunder, and the Americans with Disabilities Act of 1990 and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended, and the Kentucky Civil Rights Act.

**2.13 ATTORNEY'S FEES:**

In the event that either party deems it necessary to take legal action to enforce any provision of the Contract, and in the event the Commonwealth prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer.

**2.14 EMPLOYEE AND PROVIDER RELATIONS:**

In no way shall the Contractor represent itself directly or by inference as a representative of the Commonwealth except within the confines of its role within the scope of the contract.

**2.15 PERFORMANCE GUARANTEES:**

Each Contractor shall provide a performance guarantee in the amount of \$15,000, which is deemed ample to cover the administrative handling costs of changing contractors, in the event of non-performance, such as business failure. Guarantees shall be provided as a performance bond, effective on July of the current year.

**2.16 CHARGES FOR STORAGE:**

Contractors may assess a charge per month to recipient agencies (RAs) for each unit (case) of food remaining in storage beyond 60 days for the convenience of recipient agencies or Department officials. This charge shall not exceed 25 percent of the stated charge per case for delivery to recipient agencies. Such charges may be assessed for a full month on the first day following the anniversary arrival date as reported to the Department. The 25 percent increase per month may be assessed on the base charge only and not on a compounded basis. The charge for this service shall not be a factor in determining the low bidder.

Contractors may assess a charge per month to RAs for each unit (case) of processed items remaining in storage beyond 30 days for the convenience of the RA or Department officials. This charge shall not exceed 25 percent of the stated charge per case for delivery to RAs. Such charges may be assessed for a full month on the first day following the anniversary arrival date as reported by the distributor. The 25 percent increase per month may be assessed on the base charge only and not on a compounded basis.

Because of the need for "filling the pipeline" at school start-up and after the Christmas Holidays, the Contractor shall allow two weeks-additional grace period beyond the 60 days for shipments arriving in July and December.

**2.17 PAYMENT:**

Contractor shall submit invoices monthly on mutually agreed dates to RA. Each invoice shall include a summary of delivery tickets for the period. Each referenced ticket shall be listed in numerical sequence and show the total number of cases, bags, etc., delivered. In the event the school system falls more than 60 days in arrears in payment, Department officials and the Contractor may jointly agree to suspend delivery.

**2.18 TERMINATION:**

Either the Department or the Contractor may terminate this agreement for cause, by giving thirty (30) days' notice in writing to the other party by certified or registered mail with return receipt requested. In the event that federal funds or commodities for the contract become unavailable, the Department shall terminate the contract without penalty. Availability of funds shall be determined by the Department.

The Department may terminate this contract in whole, or in part, whenever the Department determines that the Contractor has failed to satisfactorily perform its contracted duties and responsibilities, and is unable to cure such failure within a period of time specified by the Department.

In the event of termination for default, in full or in part as provided by this Clause, the Department may procure, upon such terms and in such manner as the Department may deem appropriate, services similar to those terminated, and the Contractor shall be liable to the Department for any excess costs for such similar services. In addition, the Contractor shall be liable to the Department for administrative costs incurred by the Department in procuring such similar services.

Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform all outstanding orders issued prior to the effective date of cancellation.

**2.19 TRANSFERS:**

Cost resulting from a transfer of product due to the cancellation or termination of a contract shall be the responsibility of the Contractor.

Cost resulting from the transfer of product due to the termination of the contract by the Department shall be the responsibility of the Department; however, the Contractor can not assess a handling fee in excess of the lump-sum price.

**2.20 EMERGENCY TRANSFERS:**

In case of an emergency (or disaster), the Kentucky Department of Agriculture, Division of Food Distribution, reserves the right to transfer USDA donated foods by any carrier of the Department's choice and pay only the price quoted for lump-sum delivery.

**3. WAREHOUSE SPACE, EQUIPMENT, AND PROCEDURES:**

**3.1 GENERAL:**

Except as otherwise stated, the equipment to be used and the procedures to be followed are to include, but not necessarily limited to, those stipulated herein.

**3.2 WAREHOUSE SPACE<sup>②</sup>, EQUIPMENT, AND STAFF:**

1. Warehouse Facilities: Contractors shall have adequate warehouse facilities for the following:

- Dry foods . . . . . Ventilated space
- Frozen foods. . . . .0° to -10° F
- Chilled foods . . . . Normally 36° F (36° F to 40° F depending on the food)

Recipient Agencies in the State are potentially eligible to receive about 54 different items of packaged foods. The 54 items may be categorized according to warehouse requirements as follows:

Dry foods:		21
Refrigerated foods:	frozen	26
	chilled	7
	Total	54

It is herein set forth that any and all quantities mentioned on the invitation are purely estimates, and are not to be implied nor inferred as being guarantees. The Department is obligated to order only that quantity needed by its agencies during the term of the contract. The items and quantities may vary from year-to-year.

2. Sanitation Requirements: The Contractor's warehouse shall be free from rodent, bird, insect, and other animals and infestations; be safeguarded against theft, spoilage, and other losses; and be maintained at proper storage temperatures.

3. Inspections: Contractors warehouse may be routinely inspected by Department officials. Warehouse facilities and warehousing practices shall be continuously in compliance with the U.S. Food, Drug, and Cosmetic Act and State Food Laws. Reports of inspections shall be kept on file. Contractor shall be routinely inspected by state, federal, local, or contract agency to ensure compliance for all applicable health and fire regulations.

4. Receiving Requirements: The capability to receive 48 Ft. Semi-truck and rail shipments shall be considered when evaluating bids.

5. Delivery Vehicle Requirements<sup>③</sup>: Contractors shall have adequate vehicles as follows:

- Van trucks for dry foods and refrigerated/frozen trucks for refrigerated foods;
- Dual compartment trucks for combined handling of dry and refrigerated/frozen foods; or

Single compartment refrigerated/frozen trucks (0° F) for separate or integrated loads of dry foods and refrigerated foods.

The number of vehicles required shall depend on the size of the trucks.

6. Insurance Requirements: Prior to commencement of services under this contract, the Contractor shall secure and maintain at its sole expense, and for the duration of the contract term, sufficient insurance coverage. Proof of insurance shall be provided to the Department within 30 days once

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② Storage conditions shall be as recommended by the Refrigeration Research.

③ Temperature of frozen and chilled food shall be in accord with the Association Food and Drug Official's (AFDO'S) Code as recommended by the (Federal) Food and Drug Administration.

the bid is awarded and shall become an attachment to the contract. Proof of insurance must continue to be provided prior to expiration dated as long as contract is in effect with the Department. The following insurance coverage required is:

- a. "All Risk" escalating contents insurance at the warehouse with coverage equal to the value of the donated foods in warehouse at any one time. Value shall be determined by the current price index as published by the Federal Government at least quarterly. Price list subject to change without notice.
- b. "All Risk" transit insurance during transportation of the product with coverage equal to the value of donated foods on delivery vehicles at any one time. Value shall be determined by the current price index as published by the Federal Government at least quarterly. Price list subject to change without notice.

7. Staff Requirements: Contractor is required to have sufficient staff to meet all requirements of this contract - a minimum of one (1) full time clerical person.

8. Electronic Requirement: Contractor shall have Internet access. Contractor shall be required to receipt commodities and print warehouse notification via the Division web site.

### **3.3 WAREHOUSE PROCEDURES:**

Contractor shall adhere to the following procedures:

1. Line of Communication: Warehousemen shall discuss all matters of policy and complaints with the Department. Only RA supervisors or designated representatives shall place orders with, otherwise instruct, or make request of the Contractor. In as far as practical, all communications between the RA and Contractor shall be in writing as outlined herein.

RA supervisors shall discuss all matters of policy and complaints with Department authorities. In as far as practical, communications between the RA and Contractor shall be between designated representatives. Procedures shall be controlled by certain forms as illustrated herein.

2. Warehouse Notification of Commodities to be Received: The Contractor and the RA shall be notified by the Department of commodities to be received via the Electronic Commodity Ordering System (ECOS).

If any changes/transfers are made by the Department after the notification by ECOS the Contractor shall be notified by email.

The Contractor shall act as consignee for the Department. As consignee, the Contractor shall be held accountable and shall assume legal liabilities for all USDA Commodities received and stored at its warehouse.

3. Notice of Arrival: Consolidated Farm Service Agency (CFSA) request truck companies to give a 24-hour notice of arrival to consignees. Generally, a trucking company, without additional charge, often prearranges schedules for arrival of vehicles for unloading at consignee's premises. To do so benefit both truckers and receivers, although a truck firm has no obligation to make these appointments.

### 3.4 INBOUND FREIGHT:

All donated foods shipped to a Contractor's warehouse shall be **totally prepaid**, i.e., product and freight. Officials of the Department shall notify Contractor of expected shipping periods and request that truckers prearrange unloading appointments directly with the Contractor.

The Contractor shall:

Receive inbound freight in accordance with acceptable industry practices and shall be responsible for the following:

Inspect load for condition on arrival and verify accuracy of count. Document Bill of Lading for any Overage, Shortage, and Damaged Foods (OS&D) as may be required and complete FNS-57.

Notify railroads or truck lines of shortages, overages, and damages according to proper receiving procedures prior to releasing transport vehicles. Pursuit of claims for shortages, overages, and damages shall be the responsibility of the Department.

Annotate the Bill of Lading to indicate whether damaged merchandise is retained by the shipper or the warehouse. Receipt of shipments must be recorded electronically using the Electronic Commodity Ordering System (ECOS). All documents related to receiving of products at warehouse must be kept on file at the warehouse facility upon unloading and verification of receipts.

Carry all damaged merchandise in the inventory report until inspected by health officials and subsequently disposed. Any damaged or out-of-condition foods shall not be disposed of without a witness and prior approval of the Department. An area shall be identified to store damaged food until proper disposal.

Distributor will pick-up and return to warehouse all USDA and or processed commodities recalled by USDA. Food will be stored in a separate area until pick-up or disposal is arranged. Distributor may charge the Department for normal delivery cost per case for pick-up from the R/As.

If a USDA and or processed commodity is placed on hold, immediate steps must be taken to ensure product is not delivered to R/A.

The Distributor may assess 90% of the agreed upon delivery cost for loading and unloading commodities placed on hold or recalled, if USDA determines that it is necessary that the product be replaced by the vendor.

Inspect damaged merchandise, within five (5) working days, so that all foods suitable for human consumption are salvaged for program use.

Have sufficient warehouse space to absorb all inbound freight at abnormal peak loads (especially during inclement winter weather) at no additional cost to any RA, unless specifically exempted.

Be liable for claims levied by the USDA and/or Kentucky Department of Agriculture, Division of Food Distribution, against Contractor as a result of Contractor's failure to properly secure, handle, or account for shipment.

Assume all freight demurrage and detention charge, which occur unless specifically exempted.

Brace or level stop-off shipments for further movement.

Cooperate with railroad in spotting cars promptly. (If applicable.)

The Department shall allow the following free time for unloading trucks:

<u>Weight in Pounds Per Vehicle Stop</u>	<u>Free Time Allowed Per Vehicle Stop</u>
Less than 10,000	1 1/2 hours
10,000 and less than 20,000	3 hours
20,000 and less than 24,000	4 hours
24,000 and less than 36,000	5 hours
36,000 or more	6 hours

It is desirable that the Contractor completes unloading and release of the truck the same day, when its arrival is prior to 2 p.m. If the truck is not completely unloaded and released the day of arrival, and the carrier publishes penalty charges over and above normal detention charge; the Contractor is to bear the additional cost.

### 3.4.1 PROCESSED ITEMS:

The Contractor shall be responsible for receiving, storing and distribution of USDA items returned by a state-approved processor for the RA.

- a. Processor shall deliver no more than three items to the Contractor's warehouse at any one time, unless agreed upon by Processor and Contractor.
- b. Processor shall deliver no fewer than twenty-five (25) cases per item when delivering to a Commercial Distributor unless mutually agreed upon with the Distributor.
- c. State Approved Processor shall make delivery appointment with Contractor 24 hours prior to delivery.
- d. State Approved Processor shall provide information, item description, case weight, etc., on all items delivered to the Contractor.
- e. Contractor's shall be notified by the RA, via Electronic KY-FD-3 Form, of delivery request, no later than 48 hours after receipt or processed items.

### 3.5 OUTBOUND DELIVERIES:

- a. Frequency of Outbound Shipments: Deliveries shall be made weekly to agencies that receive weekly delivery of commercially purchased foods from the Contractor; otherwise, deliveries may be made on a skip-a-week basis. Deliveries to small agencies shall be made monthly only upon approval of Department Officials. The RA may request and pay for more frequent deliveries if the Contractor shall provide the service.  
Contractors shall receive orders for deliveries to the RA per the Electronic KY-FD-3 Form, at least 48 hours prior to scheduled delivery dates. Orders shall designate number of cases by item to be withdrawn by each school or other recipients. Recipients shall order a minimum of five (5) cases per item, per drop (except where less is allocated). However, less than five (5) cases per item may be ordered by recipients if the total number of donated cases per delivery drop is at least fifteen (15) cases.
- b. Delivery Schedule: Prior to delivery of any USDA Commodities, the Contract shall notify each RA of their system account number and delivery day. The RA shall notify the Contractor of the amounts and date of delivery of donated foods via the Electronic KY-FD-3 Form.

The RA is required to fill out and email the electronic format of the Notice of Delivery of Donated Foods (KY-FD-3) Form to the Contractor within 24 hours after receipt of notification. (Any RA having only one delivery drop who does not email a KY-FD-3 Form within the 24 hour timeframe, may receive each delivery order of commodities in full on their next scheduled delivery day, within ten (10) working days after receipt of the commodities by the distributor.) **Under no circumstance shall a Contractor deliver donated foods to a RA having more than one delivery drop without prior receipt of the electronic**

**KY-FD-3 Form. Any food delivered by a Contractor to a multi-drop RA without receipt of an electronic KY-FD-3 Form may be rejected by the RA at no cost to the RA.**

All fresh fruits and vegetables shall be delivered to the RA on the next delivery date following the receipt of USDA produce. If an electronic KY-FD-3 form has not been received by the contractor, all fresh product may be delivered to the largest school in the system.

There shall be a minimum of fifteen (15) cases per delivery (drop). In the event an RA requests delivery of less than 15 cases per drop the Contractor may charge the cost of a 15 case delivery (drop)

- c. Delivery Hours: Deliveries shall be made between the hours of 6:30 a.m. and 3:30 p.m. unless special arrangements are made in advance. Deliveries shall be made Monday through Friday, except school holidays or snow closing days. In districts where there is no one on duty in the school district, the school food authority shall notify the Contractor when schools are closed. School food service managers shall be requested to arrange a flexible work schedule so that a receiver shall be on duty the days when donated foods are scheduled for delivery after cafeteria hours (but prior to 3:30 p.m.).<sup>④</sup> Deliveries past 3:30 p.m. shall be scheduled in advance by Contractor with school food authority only in emergency situations. **Delivery schedules, once established, may not arbitrarily be changed unless a qualified emergency exist and recipient agencies are notified.**

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<sup>④</sup> Deliveries after 3:30 p.m. may be negotiable in hardship cases.

- d. Delivery Drop Areas: Drivers and helpers shall deliver merchandise in designated staging areas at each RA. Recognized areas are inside of the door of a walk-in dry storage area, freezer, or cooler. Drivers or helpers shall not be required to stow merchandise on shelves nor stack in reach-in coolers, freezers, or other cabinets.

Drivers and helpers shall require an authorized school employee to verify accuracy of items, quantities of each item, and condition of merchandise. **Distributor will insure that the recipient agency has access to the delivery order (DO) number either by printing it on delivery invoices or giving the recipient agency access to a web site with the information, or by printing a report to send to each recipient agency prior to delivery of the commodity. The above mentioned forms of notification shall include, at a minimum the delivery number will contain the letter associated with the delivery year and all digits following. Example: H-001W.** Each delivery ticket shall be signed by a designated school official. Variations from the norm, i.e., shortages, damages, etc., shall be noted on each ticket by the designated official, and initialed by both the truck driver and school official.

- e. Special Deliveries: RAs may request delivery from the Contractor within 24 hours if the Contractor fails to deliver at least 50% of each item requested. No extra charge shall be assessed. The remainder of the shipment shall be delivered on the next scheduled delivery date, unless the RA request delivery at a later date.

- f. Straight or Mixed Loads: Contractors may load commodities in vans containing only USDA foods, or in vans with foods commercially purchased, as long as other terms of the contract are satisfied.

Foods may not be stored or loaded with agricultural or other chemical, which may be harmful to the quality or safety of the food.

- g. Lump Sum Deliveries: Some recipient agencies with multiple food preparation sites may authorize products delivered lump sum to a school-operated storage facility within ten (10) days after arrival at contractor's warehouse. Contractor shall state a charge to be assessed to RA that desire lump sum deliveries

- h. Lump Sum Pick-up by Processors: Processors may be authorized to pick up a school's allocation from the Contractor. A Contractor may charge RA up to 90 percent of bid price per case for lump sum pick up by a processor.

### 3.6 INVENTORY MANAGEMENT REPORTS AND CONTROLS:

- a. Storage and Stock Rotation: All stock shall be rotated on a first in, first out basis by pack date within delivery order number in accordance with acceptable warehousing practices. Contractor shall provide evidence of stock rotation upon request.
- b. Inventory Control: The Contractor shall submit monthly perpetual and physical inventory reports using Inventory Control Form KY-FD-55 to the Department. Reports shall be submitted by the 10<sup>th</sup> day of each month and shall show the amounts on hand by item at the beginning of the month, the amount received, the amount delivered, and the balance on hand (both perpetual and physical) at the end of the month. Failure to timely submit the required report shall be considered a breach of this Agreement and may result in termination of this Agreement, in full or in part, as provided in § 2.18 of this Agreement. The report shall be emailed to: Dan Flaherty with Kentucky Department of Agriculture, Division of Food Distribution, 107 Corporate Drive, Frankfort, KY 40601 at the following email address: [Dan.Flaherty@ky.gov](mailto:Dan.Flaherty@ky.gov)

The inventory of the Department shall be stored separately in an easily identifiable manner. All pallets shall be marked with Pallet Tags as to the number of units per pallet, item number, slot number, delivery order number, pack date, date received and received and checked by and placed on each slot or bin when unloading is completed. If at any time the donated food is moved to a different slot/bin, the above information must be updated. This will supply sufficient information if or when a food alert has been identified and the decision has been made by USDA to stop delivery.

- c. Shortages and Damages: The Contractor shall be financially responsible for shortages and damages to

**products or packages after receipt, which makes them unacceptable to the Department.** All shortages and damages of foods shall be reported to the Department by email immediately upon discovery. Damages shall include, but are not limited to; infestation of products due to improper storage conditions<sup>⑤</sup>, as well as physical damage to containers including serious rust. Shortages and damages shall be accounted for with the Contractor's inventory reports.

If a shortage of donated foods is identified by the RA or Contractor within 30 days following the expiration date a review of the inventory and signed invoices of the commodities in question shall be conducted at the discretion of the Department. Determination of responsibility of shortages shall be made by the Department.

Distributing Agency is responsible for repayment of processing fee to Recipient Agency for shortage of processed items. Distributing Agency will replace in-kind or credit Recipient Agency for commodity value of same shortage of processed items.

Should overage and shortage discrepancies between physical inventory and perpetual inventory exist, such discrepancies shall be reconciled during Reviews of the Contractor. If any irreconcilable overages and/or shortages occur in the Semi-Annual Review of the Contractor, the following procedures shall be used: all overages and shortages shall be settled by computing the value of such shortages and overages, based on the cost established by the Federal Government; if the value of overages exceed the value of the shortages, no monetary settlement is required; if the value of the shortages exceed the value of the overages, a monetary settlement is required; and the perpetual inventory shall be adjusted after settlement to correspond with the physical inventory.

**UNDER NO CIRCUMSTANCES SHALL A CONTRACTOR BE PERMITTED TO RETAIN AS THEIR OWN PROPERTY ANY DONATED COMMODITIES, WHICH DEVELOP AS OVERAGES IN INVENTORY.**

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<sup>⑤</sup> Storage conditions shall be deemed proper if the Contractor uses acceptable standard tests for the detection of weevils and other insects upon arrival of stock, and employs reasonable care in the storage of products, as defined herein.