

AMENDMENT #1
Questions & Answers for RFX3160007716
Food Products for Self-Operated Food Services
Issue Date: October 31, 2025

All Prospective Bidders:

The Mississippi Department of Corrections is issuing an amendment to RFX 3160007716, Invitation for Bids for Food Products for Self-Operated Food Services, dated November 13, 2025. Amendment 1 provides responses to questions received during the question period of this solicitation.

Note: Pursuant to Section 1.32.2, page 4 of this amendment contains a required signature line that acknowledges the amendment and must be submitted with Bidder's response packet.

- **Question 1: Address of each location.**

Facility Name & Physical Location	
Central Mississippi Correctional Facility (CMCF) and Mississippi Correctional Institute for Women (MCIW) 3794 Hwy 468 Pearl, MS 39208	Delta Correctional Facility (DCF) 3800 Baldwin Road, CR540 Greenwood, MS 38930
Marshall County Correctional Facility (MCCF) 833 West Street Holly Springs, MS 38634	Mississippi State Penitentiary (MSP) MS Hwy 49 West Parchman, MS 38738
South Mississippi Correctional Institution (SMCI) 22689 MS Hwy 63 North Leakesville, MS 39451	Walnut Grove Correctional Facility (WGCF) 1650 MS Hwy 492 Walnut Grove, MS 39189
Community Work Centers (CWCs) and Restitution Centers (RCs)	
Flowood CWC 1632 Hwy 80 West Flowood, MS 39232	Forrest County CWC 112 Alcorn Avenue Hattiesburg, MS 39401
Madison County CWC 140 Corrections Drive Canton, MS 39046	Noxubee County CWC 212 Industrial Park Road Macon, MS 39341
Pike County CWC 2015 Jesse Hall Road Magnolia, MS 39652	Quitman County CWC 201 Camp B Road Lambert, MS 38643
Wilkinson County CWC 84 Prison Lane Woodville, MS 39669	Pascagoula Restitution Center 1721 E. Kenneth Ave. Pascagoula, MS 39567PROJ

Transitional Work Center
3350 Hwy 468
Pearl, MS 39208

- **Question 2: Average drop size at each location.**

Below are the average cases dropped per week.

Facility	Average Cases Dropped Per Week
Central Mississippi Correctional Facility	1800
Mississippi Correctional Institution for Women	800
Delta Correctional Facility	350
Marshall County Correctional Facility	450
Mississippi State Penitentiary	1700
South Mississippi Correctional Institution	1800
Walnut Grove Correctional Institute	300
Flowood Community Work Center	70
Forrest County Community Work Center	40
Madison County Community Work Center	40
Noxubee County Work Center	40
Pike County Community Work Center	50
Wilkinson County Community Work Center	50
Pascagoula Restitution Center	30
Transitional Work Center	30

- **Question 3: Could you please provide the amount of therapeutic/special diets?**

Actual counts vary. We currently have approximately 800 medical diets and 400 Diabetic HOS snack daily.

- **Question 4: Could you please provide the number of religious diets by type?**

Actual counts vary. MDOC accommodates approximately 1,000 Muslim diets, 20 Jewish diets, and 100 Rastafarian/Vegetarian diets.

- **Question 5: Are beverages served in bulk or PC?**

Bulk, with the exception of milk, which is served by the carton.

- **Question 6: Are you baking the bread on-site?**

All biscuits, cornbread and dinner rolls are baked on site. Frozen 30-slice pullman bread is used for sandwiches.

- **Question 7: Is syrup served individual or bulk?**

Bulk

- **Question 8: Is the jelly served individual or bulk?**

Bulk

- **Question 9: What locations serve cafeteria style and what facilities are provide individual trays?**
All CWC facilities are cafeteria style. All main facilities have both cafeteria style and individual tray service available based on the security status of the inmate.
- **Question 10: How many trustees get double portions?**
Trustees do not receive double portions.
- **Question 11: Could we please have a copy of the current contract?**
Answer: Contracts are available for review on the following website: [Transparency.MS.Gov](https://transparency.ms.gov) and selecting State of Mississippi Contracts. It is also attached to this amendment as Exhibit 1.
- **Question 12: Could we please have the last 3 months of food service invoices?**
This information can not be provided as it would be considered proprietary information.
- 1. **Question 13: Many of our scratch patty recipes use TVP. Is soy or TVP allowed in the recipes?**
We do not add soy or TVP to our scratch recipes.
- **Question 14: Do youth offenders follow NSLP? Do youth offenders get anything different than the provided menus?**
Youth Offenders receive the same meal as the rest of the facilities.

Food Products for Self-Operated Food Services

RFx #3160007716

Amendment #1 – Questions and Responses

Issue Date: October 31, 2025

Signature and Submission of Amendment #1 are required with your IFB.

Receipt for Amendment #1: _____
Signature

Printed Name

Date

Company Name

Title

EXHIBIT 1 - CURRENT CONTRACTS FOR FOOD PRODUCTS

C#: 8200055290

FOOD PRODUCTS AGREEMENT BETWEEN MISSISSIPPI DEPARTMENT OF CORRECTIONS AND THE MERCHANTS COMPANY

This Food Products Agreement is made and entered into on this the 8th day of February, 2021, by and between the Mississippi Department of Corrections, located at 301 North Lamar Street Jackson, MS, 39201, (hereinafter referred to as "MDOC") and The Merchants Company doing business as Merchants Foodservice (hereinafter referred to as "Merchants"), located at 1100 Edwards Street, Hattiesburg, MS 39401. Merchants and MDOC may be referred to herein jointly as "parties" or individually as "party".

WITNESSETH

WHEREAS, the MDOC is responsible for the operation and management of the food services at the Mississippi State Penitentiary (MSP), Central Mississippi Correctional Facility (CMCF), Youth Offender Unit (YOU), South Mississippi Correctional Institution (SMCI), eight (8) Community Work Centers (CWCs), and three (3) Pre-Release (Restitution) Centers (RC) (hereinafter referred to as "Sites");

WHEREAS, pursuant to Mississippi Code Annotated § 31-7-13 the MDOC released an Invitation for Bids (RFx: 3140002437, Amended RFx: 3140002480) to solicit vendors to provide specified food products for the operation of the MDOC self-operated food services for MDOC Sites;

WHEREAS, Merchants, after meeting the defined criteria as stated in the Invitation for Bid, did qualify as a perspective vendor and was invited to participate in the required Reverse Auction (MAGIC: 3300000640). Merchants was the only vendor to submit a bid in the allotted time. After thorough review and analysis of Merchants' bid response, sampling of food quality, and bid price offered, MDOC issued their Notice of Intent to Award Merchants a Contract to provide food products;

WHEREAS, Merchants is in the business of providing food products to correctional facilities and desires to provide such products to the MDOC at the aforementioned Sites under the terms and conditions of this Agreement, the Invitation to Bid (IFB), and their Bid Response as incorporated herein;

WHEREAS, MDOC desires to engage Merchants to provide and deliver the necessary food products needed to operate the MDOC self-operated food services within the aforementioned Sites;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants, obligations, and agreements herein contained, the parties do hereby agree as follows:

ARTICLE I DEFINITIONS

Agency – means the Mississippi Department of Corrections (MDOC)

Contract – means this Agreement

Emergency – Emergency is defined, but not limited to, natural or man-made disaster, utility outage (power, gas, and water), pandemic, or other event(s)

Facility – means the secured correctional building(s) located at the designated Sites throughout the State of Mississippi and under the authority of the Mississippi Department of Corrections (MDOC)

Force Majeure – means an unforeseeable circumstance that prevents either party from performing any of the terms and conditions of this Agreement, which circumstance results from causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, storm, fire, epidemics, casualty, war or national emergency

Inmate – includes any adult or youth person committed in accordance with the applicable laws of the State and assigned to the Facility for incarceration therein pursuant to this Agreement

MDOC – means the Mississippi Department of Corrections

Sites – means Mississippi State Penitentiary (MSP), Central Mississippi Correctional Facility (CMCF), Youth Offender Unit (YOU), South Mississippi Correctional Institution (SMCI), eight (8) Community Work Centers (CWCs), and three (3) Pre-Release (Restitution) Centers (RC)

State – means the State of Mississippi and/or the Mississippi Department of Corrections, as applicable

ARTICLE 2 FOOD PRODUCTS AND DELIVERY

2.1 Scope of Service: Merchants agrees to procure and deliver all food items as specified in the IFB to ensure that MDOC can prepare its Four-Week Menu Cycle as stated in IFB-Appendix A and the Holiday Menus as stated in IFB-Appendix B. Merchants hereby acknowledges that MDOC will prepare food in accordance with the *Index of Recipes Armed Forces Recipe Services*. Merchants agrees to have ample inventory on hand at all times to supply each Site with the required amount of food products to prepare and serve the designed menu at each Site for the total Inmate population plus ten percent (10%).

MDOC will run a four-week menu cycle starting with week one. After the fourth week, the menu will start over again with week one. Every six (6) months the menu may be changed to substitute different meals. Changes will be made only after a menu conference is held with the MDOC Food Services Director and Merchants. This will allow MDOC to change products that are not being

accepted well by Inmates. MDOC will place orders with Merchants two (2) weeks in advance of each cycle. This will allow time to make necessary menu changes.

In case of food shortages, Merchants agrees that a like-for-like substitution can be made with prior approval by the MDOC Food Services Director.

MDOC expects Merchants to provide the MDOC Food Services Director with market information related to product condition and quality, pricing trends and new products, if appropriate, and make recommendations on more appropriate product(s) to use.

Merchants agrees that all food specifications, as listed in IFB-Appendix D, shall be provided with no deviations or substitutions allowed unless prior approval is obtained from the MDOC Food Service Director with at least thirty (30) days advanced notice.

2.2 Deliveries: Merchants agrees to make weekly deliveries directly to the three (3) main facilities: MSP, CMCF, and SMCI and every two weeks to the eight (8) CWCs and three (3) RCs at the locations designated in IFB-Appendix C. Deliveries shall be made Monday through Friday between the hours of 8:00 a.m. and 3:00 p.m., CST, unless otherwise specified.

Merchants agrees that food deliveries will be made in accordance with the Delivery Schedule as agreed to by Merchants and the MDOC Food Services Director.

2.3 Conditions and Packaging: It is understood and agreed that any item(s) offered or shipped as a result of this Agreement shall meet all applicable federal, state and local regulations. All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

2.4 Inspection: Inspection and acceptance of food products will be at the designated location unless otherwise provided. Title and risk of loss or damage to all items shall be the responsibility of Merchants until accepted by the MDOC, unless loss or damage results from negligence by the MDOC. Merchants shall be responsible for filing, processing and collecting all damage claims. However, to assist Merchants in the expeditious handling of damage claims, the MDOC will: a) Record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading, b) Report damage (visible and concealed) to the carrier and Merchants, confirming such reports, in writing, within five (5) days of delivery, requesting that the carrier inspect the damaged food product, c) Retain the item and its shipping container, including inner packing material, until inspection is performed by the carrier, and disposition given by Merchants, and d) Provide Merchants with a copy of the carrier's Bill of Lading and damage inspection report.

2.5 Safety Standards: Unless otherwise stipulated, all food products must be handled and shipped in accordance with all applicable health and safety standards. Merchants agrees that all frozen food items must be delivered at a temperature of zero degrees or below and any refrigerated food items must be delivered at a temperature between 35-40 degrees.

ARTICLE 3 EMERGENCY

3.1 Emergency: Merchants must provide uninterrupted delivery of food products in the event of an Emergency, disaster, utility outage, or any other event(s) that may close the MDOC Sites or affect delivery from Merchants.

Merchants will develop and provide an Emergency plan to include alternative delivery sites as requested by the MDOC Food Services Director. MDOC shall be responsible for providing Merchants with alternative delivery Sites. The Emergency plan shall be submitted to the MDOC Food Services Director for approval within thirty (30) days of execution of this Agreement.

3.2 Force Majeure: Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("Emergency events"). When such a cause arises, Merchants shall notify the MDOC immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Emergency events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the MDOC determines it to be in its best interest to terminate the agreement.

3.3 Emergency Contingency: Merchants will submit a contingency (Emergency) plan for MDOC's approval to provide food products in the event of Emergency. MDOC will use its best efforts to assist Merchants by permitting reasonable variations in the menu cycle and the method service, as conditions may require. However, Merchants must understand that it will not be relieved of its responsibility to provide food products under the terms of the Contract. Any changes to the Emergency plan must be approved by MDOC prior to implementation.

ARTICLE 4 PERSONNEL

4.1 Delivery Drivers: Merchants agrees that all delivery drivers will receive an NCIC background check and be cleared prior to entering an MDOC Site. Merchants will be responsible for educating all delivery drivers regarding Mississippi Code Annotated §47-5-193 in regards to contraband and acceptable items that can be brought on correctional grounds.

4.2 E-Verification: If applicable, Merchants represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by

the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Merchants agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Merchants agrees to provide a copy of each such verification. Merchants further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Merchants to the following:

- 4.2.1 termination of this Contract for services and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- 4.2.2 the loss of any license, permit, certification or other document granted to Merchants by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- 4.2.3 both. In the event of such cancellation/termination, Merchants would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

4.3 Merchants Personnel: The MDOC shall, throughout the life of this Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Merchants. If the MDOC reasonably rejects staff or subcontractors, Merchants must provide replacement staff or subcontractors satisfactory to the MDOC in a timely manner and at no additional cost to the MDOC. The day-to-day supervision and control of Merchants' employees and subcontractors is the sole responsibility of Merchants.

ARTICLE 5 INSURANCE COVERAGE

5.1 Merchants Insurance Requirements: Merchants shall maintain throughout the term of this Contract, at their expense, the established levels of insurance as shown below. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance and such certificate shall identify this Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated, or materially altered.

- Workers' Compensation and Employees Liability Insurance not less than \$100,000
- Comprehensive General (Public) Liability
 - Property damage (\$1,000,000.00)
 - Personal Injury
 - Independent Contractors
 - Premises/Operation
 - Contractual Liability Bodily Injury (\$1,000,000.00 per occurrence)
 - Automobile Liability (\$1,000,000.00 per occurrence)
 - Fidelity Bond on Merchants' employees (\$50,000.00)

5.2 Failure to Maintain Policies: Failure on the part of Merchants to procure and maintain the required insurance and provide proof thereof to the MDOC, shall constitute a material breach of this Contract, upon which the MDOC may immediately terminate this Contract and the ten (10) day period for Merchants to cure the default as stated in Section 8.3.1 is not required. Prior to the effective date of this Contract, Merchants shall furnish the MDOC with appropriately executed certificates of insurance and performance bond. Such certificates shall identify this Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated or materially altered. All insurance certificates must provide coverage to the MDOC as an additional insured.

ARTICLE 6 PERFORMANCE BOND

6.1 Performance Bond: Merchants shall maintain, at their expense, a performance bond in the amount of one million (\$1,000,000.00) dollars. Said performance bond shall be in the form of a bond issued by an insurance company in the State of Mississippi and countersigned by an agent resident in Mississippi. Said performance bond shall be in force for the life of this Contract.

ARTICLE 7 RECORDS AND REPORTS

7.1 Inventory Management System: Merchants shall maintain an automated inventory management system on all food products delivered to MDOC Sites. This system will maintain quantities and values for balances, receipts, and issues of food products. Merchants agrees to provide MDOC access and training on the use of this system.

ARTICLE 8 TERM AND TERMINATION

8.1 Term: The term of this Agreement shall be for a period of thirty-six (36) months commencing on **March 1, 2021** and ending on **March 1, 2024** with the option to renew for two (2) additional twelve month periods or one (1) twelve month period. This Agreement is subject to annual appropriations as set forth in Section 10.6 of this Agreement.

Upon written agreement of both parties at least ninety (90) days prior to the Contract anniversary date, this Contract may be renewed by the MDOC for the period stated above. The total number of renewal years permitted shall not exceed two. The terms and conditions of this Contract will remain unchanged.

Merchants guarantees their prices for the first twelve (12) months of this Contract. MDOC will conduct a vendor review annually in April to discuss food quality, vendor performance, and cost of food. MDOC may consider an increase in food product payment per day, if Merchants can provide substantive evidence and documentation to grant an increase. Food increase in price per day, if granted, may not exceed five percent (5%) of current year's price per day.

8.2 Termination for Convenience:

- 8.2.1 *Termination.* The Commissioner or designee may, when the interests of the MDOC so require, terminate this Contract in whole or in part, for the convenience of the MDOC. The Commissioner or designee shall give written notice of the termination to Merchants specifying the part of this Contract terminated and when termination becomes effective.
- 8.2.2 *Merchants' Obligations.* Merchants shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Merchants will stop work to the extent specified. Merchants shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Merchants shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Commissioner or designee may direct Merchants to assign Merchants' right, title, and interest under terminated orders or subcontracts to the MDOC. Merchants must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

8.3 Termination for Default:

- 8.3.1 *Default.* If Merchants refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Commissioner or designee may notify Merchants in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Commissioner or designee, such officer may terminate Merchants' right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Commissioner or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Commissioner or designee. Merchants shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods.
- 8.3.2 *Merchants' Duties.* Notwithstanding termination of the Contract and subject to any directions from the MDOC Chief Procurement Officer, Merchants shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Merchants in which the MDOC has an interest.
- 8.3.3 *Compensation.* Payment for completed services delivered and accepted by the MDOC shall be at the Contract price. The MDOC may withhold from amounts due Merchants such sums as the Commissioner or designee deems to be necessary to protect the MDOC against loss because of outstanding liens or claims of former lien holders and to reimburse the MDOC for the excess costs incurred in procuring similar goods and services.
- 8.3.4 *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Merchants shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Merchants to make

progress in the prosecution of the work hereunder which endangers such performance) if Merchants has notified the Commissioner or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the MDOC and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Merchants shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Merchants to meet the Contract requirements. Upon request of Merchants, the Commissioner or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Merchants' progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the MDOC under the clause entitled in fixed-price Contracts, "Termination for Convenience."

8.3.5 *Erroneous Termination for Default.* If, after notice of termination of Merchants' right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the MDOC, be the same as if the notice of termination had been issued pursuant to a termination for convenience.

8.3.6 *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

8.4 Termination Upon Bankruptcy: This Contract may be terminated, in whole or in part, by MDOC upon written notice to Merchants, if Merchants should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Merchants of an assignment for the benefit of its creditors. In the event of such termination, Merchants shall be entitled to recover just and equitable compensation for satisfactory work performed under this Contract, but in no case shall said compensation exceed the total Contract price.

8.5 Liquidated Damages: When the Contractor is given notice of delay or non-performance as specified in Subsection 8.3.1, Termination for Default Clause, of this contract and fails to cure in the time specified, the Contractor shall be liable for damages for delay in the amount of \$500.00 per calendar day from date set for cure until either the State reasonably obtains similar commodities if the Contractor is terminated for default, or until the Contractor provides the supplies or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or non-performance is excused under Subsection 8.3.4, Excuse for Non-performance or Delayed Performance of the Termination for Default Clause of this contract, liquidated damages shall not be due the State. The Contractor remains liable for damages caused other than by delay.

ARTICLE 9 COMPENSATION

9.1 Cost Per Inmate Per Day: Merchants agrees to be compensated at a rate of \$2.45 per Inmate, per day based on the daily midnight count provided by the Inmate locator office. The price includes all packaging, handling, shipping charges and delivery to the destination shown herein. Price includes Freight on Board (F.O.B) to MDOC Sites.

Price is firm for the term of the Contract except that the State shall receive the benefit of any price decrease in excess of five (5%) percent. Merchants must provide written price reduction information within ten (10) days of its effective date.

9.2 Invoicing: Merchants shall invoice MDOC at the corresponding cost of \$2.45 per Inmate plus the required 10% per day (Inmate population plus 10% times the number of days per week) on a weekly basis based on the daily midnight count provided by the Inmate locator offices. The billing cycle will be Saturday through Friday. The weekly invoice will contain the total population for the week, the corresponding price and the total for each Emergency. A detailed report showing the count by day for each Emergency will be provided as backup for the invoice. Merchants shall be paid upon submission of properly certified invoices to MDOC at the prices stipulated herein, after delivery and acceptance of goods, less deductions, if any, as provided. Invoices shall contain the Contract number, purchase order number and Merchants' Federal Employer Identification Number. An original and one (1) copy of the invoice shall be submitted. Failure to follow these instructions may result in delay in processing invoice for payment.

9.3 Taxes: MDOC is exempt from federal excise taxes and State and local sales or use taxes.

9.4 Payment: MDOC agrees to initiate the payment process to Merchants within fifteen (15) days from the date of the invoice and said payment is due to Merchants within forty-five (45) days of receipt by MDOC, unless the amount due is disputed by MDOC. MDOC agrees to pay any portion of the invoice that is not disputed by MDOC.

9.5 E-Payment: Merchants agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The MDOC agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the MDOC within forty-five (45) days of receipt of invoice. (Mississippi Code Annotated § 31-7-301 *et seq.*)

9.6 USDA Commodities: Merchants agrees to maximize the utilizations of any food items obtained through the commodities program of the U.S. Department of Agriculture (USDA) or any other similar food source, which will be credited against the weekly invoice at a value determined by the USDA. There is no guarantee on the type, or quality of, commodities that will be available. These items will be utilized and have priority over purchased items.

9.7 Food Produced by MDOC: Merchants agrees to use farm products provided by the MDOC at a value to be determined by the MDOC with a credit issued for such products on the weekly invoice at a price determined weekly based on the USDA Fruit and Vegetable Terminal

Markets Standard Report in Atlanta, Georgia adjusted for processing. Mississippi Prison Agricultural Enterprise (MPAE) will invoice Merchants weekly for these products. The MDOC produces vegetables in their farm operations, which are grown and processed by MPAE. These items will be utilized and have priority over purchased items.

ARTICLE 10 GENERAL TERMS AND CONDITIONS

10.1 Procurement Regulations: This Contract shall be governed by the Mississippi Public Procurement Review Board and the applicable provisions as stated in the Mississippi *Procurement Manual* a copy of which is available online at www.dfa.ms.gov

10.2 Trade Secrets, Commercial and Financial Information: It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

10.3 Stop Work Order

10.3.1 Order to Stop Work: The Chief Procurement Officer, may, by written order to Merchants at any time, and without notice to any surety, require Merchants to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Merchants, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Merchants shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- (a) cancel the stop work order; or,
- (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Contract.

10.3.2 Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Merchants shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Merchants price, or both, and the Contract shall be modified in writing accordingly, if:

- (a) the stop work order results in an increase in the time required for, or in Merchants' cost properly allocable to, the performance of any part of this Contract; and,

- (b) Merchants asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

10.3.3 *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

10.3.4 *Adjustments of Price:* Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this Contract.

10.4 Price Adjustment

10.4.1 *Price Adjustment Methods.* Any adjustments in Contract price, pursuant to a clause in this Contract, shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the additional performance;
- (b) by unit prices specified in the Contract;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Contract; or,
- (d) by the price escalation clause.

10.4.2 *Submission of Cost or Pricing Data.* Merchants shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3.115 (Cost or Pricing Data) of the *Mississippi Procurement Manual*.

10.5 Applicable Law: This Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Merchants shall comply with applicable federal, State, and local laws and regulations.

10.6 Availability of Funds: It is expressly understood and agreed that the obligation of the MDOC to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of State and/or federal funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDOC, the MDOC shall have the right upon ten (10) working days written notice to Merchants, to terminate this agreement without damage, penalty, cost or expenses to the MDOC of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

10.7 Independent Contractor Status: Merchants shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Merchants, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Merchants. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Merchants hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Merchants. Merchants' personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Merchants nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDOC, and the MDOC shall be at no time legally responsible for any negligence or other wrongdoing by Merchants, its servants, agents, or employees. The MDOC shall not withhold from the Contract payments to Merchants any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to Merchants. Further, the MDOC shall not provide to Merchants any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

10.8 Representation Regarding Contingent Fees: Merchants represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Merchants bid or proposal.

10.9 Representation Regarding Gratuities: Merchants represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 (Gratuities) of the *Mississippi Procurement Manual*.

10.10 Compliance with Laws: Merchant understands that the MDOC is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and Merchants agrees during the term of the agreement that Merchants will strictly adhere to this policy in its employment practices and provision of services. Merchants shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

10.11 Transparency: This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. (See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated §79-23-1.) In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Merchants as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by State or federal law or outside the applicable freedom of information statutes, will be redacted.

10.12 Paymode: Payments by State agencies using the Mississippi Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided as directed by the State. These payments shall be deposited into the bank account of Merchants' choice. The State may, at its sole discretion, require Merchants to electronically submit invoices and supporting documentation at any time during the term of this agreement. Merchants understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

10.13 Attorney's Fees and Expenses: Subject to other terms and conditions of this agreement, in the event Merchants defaults in any obligations under this agreement, Merchants shall pay to the MDOC all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the MDOC in enforcing this agreement or otherwise reasonably related thereto. Merchants agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Merchants.

10.14 Anti-Assignment/Subcontracting: Merchants acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Merchants' special skills and expertise. Merchants shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

10.15 Authority to Contract: Merchants warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

10.16 Confidentiality: Notwithstanding any provision to the contrary contained herein, it is recognized that MDOC is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. (Mississippi Code Annotated §§ 25-61-1 *et seq.*) If a public records request is made for any information provided to MDOC pursuant to the agreement and designated by Merchants in writing as trade secrets or other proprietary confidential information, MDOC shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MDOC shall not be liable to the Merchants for disclosure of information required by court order or required by law.

10.17 Failure to Deliver: In the event of failure of Merchants to deliver services in accordance with the Contract terms and conditions, the MDOC, after due oral or written notice, may procure the services from other sources and hold Merchants responsible for any resulting additional

purchase and administrative costs. This remedy shall be in addition to any other remedies that the MDOC may have.

10.18 Failure to Enforce: Failure by the MDOC at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the MDOC to enforce any provision at any time in accordance with its terms.

10.19 Legal Action: The MDOC will be responsible for all legal actions filed which name the MDOC as a defendant, when MDOC personnel are involved or when applicable MDOC rules and regulations are at issue. Responsibility of defense of legal actions against Merchants will be that of Merchants.

10.20 No Limitation of Liability: Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Merchants for harm caused by the intentional or reckless conduct of Merchants or for damages incurred through the negligent performance of duties by Merchants or the delivery of products that are defective.

10.21 Notices: All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

Mississippi Department of Corrections
301 North Lamar Street
Jackson, MS 39201

The Merchants Company
d/b/a Merchants Foodservices
1100 Edwards Street
Hattiesburg, MS 39401

10.22 Oral Statements: No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by the MDOC and agreed to by Merchants.

10.23 Record Retention and Access to Records: Provided Merchants is given reasonable advance written notice and such inspection is made during normal business hours of Merchants, the MDOC or any duly authorized representatives shall have unimpeded, prompt access to any of Merchants' books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Merchants for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

10.24 Third Party Action Notification: Merchants shall give the MDOC prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Merchants by any entity that may result in litigation related in any way to this agreement.

10.25 Approval: It is understood that this Contract requires approval by the Public Procurement Review Board. If this Contract is not approved, it is void and no payment shall be made hereunder.

10.26 Recovery of Money: Whenever, under the Contract, any sum of money shall be recoverable from or payable by Merchants to the MDOC, the same amount may be deducted from any sum due to Merchants under the Contract or under any other Contract between Merchants and the MDOC. The rights of the MDOC are in addition and without prejudice to any other right the MDOC may have to claim the amount of any loss or damage suffered by the MDOC on account of the acts or omissions of Merchants.

10.27 Right to Audit: Merchants shall maintain such financial records and other records as may be prescribed by the MDOC or by applicable federal and State laws, rules, and regulations. Merchants shall retain these records for a period of three years after final payment, or until they are audited by the MDOC, whichever event occurs first. These records shall be made available during the term of the Contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi Office of State Auditor, its designees, or other authorized bodies.

10.28 Contract Amendments: No amendment to this Contract shall be valid or enforceable unless in writing and executed by duly authorized representatives of both parties with the same degree of formality followed by the parties in executing and entering into this Contract.

10.29 Indemnification: To the fullest extent allowed by law, Merchants shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Merchants and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the MDOC's sole discretion upon approval of the Office of the Mississippi Attorney General, Merchants may be allowed to control the defense of any such claim, suit, etc. In the event Merchants defends said claim, suit, etc., Merchants shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Merchants shall be solely responsible for all costs and/or expenses associated with such defense, and the MDOC shall be entitled to participate in said defense. Merchants shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

10.30 Conflicts of Interest: Merchants covenants that it presently has no interest and shall not acquire any interest, direct or indirect which would conflict in any manner or degree with performance of the Contract and no person having any such interest shall be employed. In addition, no officer, elected official, agent or employee of MDOC and no member of its governing body shall participate in any decision relating to this agreement which affects his/her personal interest or any association which he/she is directly or indirectly interested or has any personal or pecuniary interest.

10.31 Waiver: No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by Contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

10.32 Severability: If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

10.33 Extent of Contract: This agreement, the IFB-MAGIC RFx: 3140002437, Amended IFB-MAGIC RFx: 3140002480, Merchants' IFB Response which are all attached to this agreement and incorporated herein represent the entire Contract between MDOC and Merchants and supersede all prior negotiations, representations or agreements, whether written or oral.

10.34 Survival: The provisions of this Contract which expressly or impliedly contemplate or require performance after the termination or expiration of operations hereunder shall survive such expiration or termination.

10.35 Headings: Headings and titles of sections in this Contract are included herein for convenience of reference only and shall not constitute a part of the Contract for any other purpose and will not affect in any way the meaning or interpretation of this Contract.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives the day and year first above mentioned.

**THE MERCHANTS COMPANY
D/B/A MERCHANTS FOOD SERVICE**

By: 

Date: 2/8/2021

WITNESS: 

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS**

By:  By KM

Date: 2/8/21

WITNESS: 

ATTACHMENT 1

**MDOC INVITATION FOR BID
IFB-MAGIC RFx: 3140002437
AMENDED IFB-MAGIC RFx: 3140002480**

ATTACHMENT 2

**MDOC INVITATION FOR BID
IFB-MAGIC RFx: 3140002437
AMENDED IFB-MAGIC RFx: 3140002480**

**QUESTIONS & ANSWERS
AMENDMENT - A**

ATTACHMENT 3

**MDOC INVITATION FOR BID
IFB-MAGIC RFx: 3140002437
AMENDED IFB-MAGIC RFx: 3140002480**

**AMENDMENT – A - 1
CLARIFICATION**

ATTACHMENT 4

MERCHANTS' RESPONSE

TO

MDOC INVITATION FOR BID

IFB-MAGIC RFx: 3140002437

AMENDED IFB-MAGIC RFx: 3140002480

**FOOD PRODUCTS AGREEMENT
BETWEEN MISSISSIPPI DEPARTMENT OF CORRECTIONS
AND
THE MERCHANTS COMPANY**

This Food Products Agreement is made and entered into on this the 7th day of September, 2022, by and between the Mississippi Department of Corrections, located at 301 North Lamar Street Jackson, MS, 39201, (hereinafter referred to as “MDOC”) and The Merchants Company doing business as Merchants Foodservice (hereinafter referred to as “Merchants”), located at 1100 Edwards Street, Hattiesburg, MS 39401. Merchants and MDOC may be referred to herein jointly as “parties” or individually as “party”.

WITNESSETH

WHEREAS, the MDOC is responsible for the operation and management of the food services at the Marshall County Correctional Facility (MCCF) and Walnut Grove Correctional Facility (WGCF) (hereinafter referred to as “Sites”);

WHEREAS, pursuant to Mississippi Code Annotated § 31-7-13 the MDOC released an Invitation for Bids (RFx: 3160005171) to solicit vendors to provide specified food products for the operation of the MDOC self-operated food services for MDOC Sites;

WHEREAS, Merchants, after meeting the defined criteria, along with a thorough review and analysis of Merchants’ bid price offered and bid response, MDOC issued a Notice of Intent to Award to Merchants a contract to provide food products and delivery service;

WHEREAS, Merchants is in the business of providing food products and delivery service to correctional facilities and desires to provide such products and service to the MDOC at the aforementioned Sites under the terms and conditions of this Agreement, the Invitation to Bid (IFB), and their Bid Response as incorporated herein;

WHEREAS, MDOC desires to engage Merchants to provide and deliver the necessary food products needed to operate the MDOC self-operated food services within the aforementioned Sites;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants, obligations, and agreements herein contained, the parties do hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Agency – means the Mississippi Department of Corrections (MDOC)

Contract – means this Agreement

Emergency – Emergency is defined, but not limited to, natural or man-made disaster, utility outage (power, gas, and water), pandemic, or other event(s)

Facility – means the secured correctional building(s) located at the designated Sites throughout the State of Mississippi and under the authority of the Mississippi Department of Corrections (MDOC)

Force Majeure – means an unforeseeable circumstance that prevents either party from performing any of the terms and conditions of this Agreement, which circumstance results from causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, storm, fire, epidemics, casualty, war or national emergency

Inmate – includes any adult or youth person committed in accordance with the applicable laws of the State and assigned to the Facility for incarceration therein pursuant to this Agreement

MDOC – means the Mississippi Department of Corrections

Sites – means Marshall County Correctional Facility (MCCF) and Walnut Grover Correctional Facility (WGCF)

State – means the State of Mississippi and/or the Mississippi Department of Corrections, as applicable

ARTICLE 2 FOOD PRODUCTS AND DELIVERY SERVICE

2.1 Scope of Service: Merchants agrees to procure and deliver all food items as specified in the IFB to ensure that MDOC can prepare its Four-Week Menu Cycle as stated in IFB-Appendix A and the Holiday Menus as stated in IFB-Appendix B. Merchants hereby acknowledges that MDOC will prepare food in accordance with the *Index of Recipes Armed Forces Recipe Services*. Further, Merchants agrees to provide the following special Holiday Meals with the Holiday menu of meals as shown in IFB-Appendix B:

- New Year's Day
- Martin Luther King Day
- Good Friday
- Easter Sunday
- Eid-al-Fir
- Juneteenth Day
- Fourth of July
- Thanksgiving
- Christmas

Merchants agrees to have ample inventory on hand at all times to supply each Site with the required amount of food products to prepare and serve the designed menu at each Site for the total Inmate population plus thirteen percent (13%).

MDOC will run a four-week menu cycle starting with week one. After the fourth week, the menu will start over again with week one. Every six (6) months the menu may be changed to substitute different meals. Changes will be made only after a menu conference is held with the MDOC Food Services Director and Merchants. This will allow MDOC to change products that are not being accepted well by Inmates. MDOC will place orders with Merchants two (2) weeks in advance of each cycle. This will allow time to make necessary menu changes.

In case of food shortages, Merchants agrees that a like-for-like substitution can be made with prior approval by the MDOC Food Services Director.

MDOC expects Merchants to provide the MDOC Food Services Director with market information related to product condition and quality, pricing trends and new products, if appropriate, and make recommendations on more appropriate product(s) to use.

Merchants agrees that all food specifications, as listed in IFB-Appendix D, shall be provided with no deviations or substitutions allowed unless prior approval is obtained from the MDOC Food Service Director with at least thirty (30) days advanced notice.

2.2 Deliveries: Merchants agrees to make weekly deliveries to MCCF and WGCF at the locations designated in IFB-Appendix C. Deliveries shall be made Monday through Friday between the hours of 8:00 a.m. and 3:00 p.m., CST, unless otherwise specified.

Merchants agrees that food deliveries will be made in accordance with the Delivery Schedule as agreed to by Merchants and the MDOC Food Services Director.

2.3 Conditions and Packaging: It is understood and agreed that any item(s) offered or shipped as a result of this Agreement shall meet all applicable federal, state and local regulations. All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

2.4 Inspection: Inspection and acceptance of food products will be at the designated location unless otherwise provided. Title and risk of loss or damage to all items shall be the responsibility of Merchants until accepted by the MDOC, unless loss or damage results from negligence by the MDOC. Merchants shall be responsible for filing, processing and collecting all damage claims. However, to assist Merchants in the expeditious handling of damage claims, the MDOC will: a) Record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading, b) Report damage (visible and concealed) to the carrier and Merchants, confirming such reports, in writing, within five (5) days of delivery, requesting that the carrier inspect the damaged food product, c) Retain the item and its shipping container, including inner packing material, until inspection is performed by the carrier, and disposition given by Merchants, and d) Provide Merchants with a copy of the carrier's Bill of Lading and damage inspection report.

2.5 Safety Standards: Unless otherwise stipulated, all food products must be handled and shipped in accordance with all applicable health and safety standards. Merchants agrees that all frozen food items must be delivered at a temperature of zero degrees or below and any refrigerated food items must be delivered at a temperature between 35-40 degrees.

ARTICLE 3 EMERGENCY

3.1 Emergency: Emergency is defined, but not limited to, natural or man-made disaster, utility outage (power, gas, and water), pandemic, or other event(s). In the event of an emergency involving Merchants' food production plants, manufacturers, and/or distributors, Merchants agrees provide uninterrupted food product deliveries. Merchants agrees to provide an emergency plan for food product deliveries to MDOC. In the event of an emergency at MDOC facilities, Merchant must be able to accommodate an alternative delivery site on a temporary basis. MDOC will notify the Merchants of the alternative delivery site.

3.3 Emergency Contingency: Merchants will develop and submit an Emergency Contingency Plan for MDOC's approval to provide food products in the event of Emergency. MDOC will use its best efforts to assist Merchants by permitting reasonable variations in the menu cycle and the method service, as conditions may require. However, Merchants must understand that it will not be relieved of its responsibility to provide food products under the terms of the Agreement. Any changes to the Emergency Contingency Plan must be approved by MDOC Food Service Director prior to implementation.

ARTICLE 4 PERSONNEL

4.1 Delivery Drivers: Merchants agrees that all delivery drivers will receive an NCIC background check and be cleared prior to entering an MDOC Site. Merchants will be responsible for educating all delivery drivers regarding Mississippi Code Annotated §47-5-193 in regards to contraband and acceptable items that can be brought on correctional grounds.

4.2 E-Verification: If applicable, Merchants represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Merchants agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Merchants agrees to provide a copy of each such verification. Merchants further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Merchants to the following:

- 4.2.1 termination of this Contract for services and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;

- 4.2.2 the loss of any license, permit, certification or other document granted to Merchants by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- 4.2.3 both. In the event of such cancellation/termination, Merchants would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

4.3 Merchants Personnel: The MDOC shall, throughout the life of this Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Merchants. If the MDOC reasonably rejects staff or subcontractors, Merchants must provide replacement staff or subcontractors satisfactory to the MDOC in a timely manner and at no additional cost to the MDOC. The day-to-day supervision and control of Merchants' employees and subcontractors is the sole responsibility of Merchants.

ARTICLE 5 INSURANCE COVERAGE

5.1 Merchants Insurance Requirements: Merchants shall maintain throughout the term of this Contract, at their expense, the established levels of insurance as shown below. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance and such certificate shall identify this Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated, or materially altered.

- Workers' Compensation and Employees Liability Insurance not less than \$100,000
- Comprehensive General (Public) Liability
 - Property damage (\$1,000,000.00)
 - Personal Injury
 - Independent Contractors
 - Premises/Operation
 - Contractual Liability Bodily Injury (\$1,000,000.00 per occurrence)
 - Automobile Liability (\$1,000,000.00 per occurrence)
 - Fidelity Bond on Merchants' employees (\$50,000.00)

5.2 Failure to Maintain Policies: Failure on the part of Merchants to procure and maintain the required insurance and provide proof thereof to the MDOC, shall constitute a material breach of this Contract, upon which the MDOC may immediately terminate this Contract and the ten (10) day period for Merchants to cure the default as stated in Section 8.3.1 is not required. Prior to the effective date of this Contract, Merchants shall furnish the MDOC with appropriately executed certificates of insurance and performance bond. Such certificates shall identify this Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated or materially altered. All insurance certificates must provide coverage to the MDOC as an additional insured.

ARTICLE 6 PERFORMANCE BOND

6.1 Performance Bond: Merchants shall maintain, at their expense, a performance bond in the amount of one million (\$1,000,000.00) dollars. Said performance bond shall be in the form of a bond issued by an insurance company in the State of Mississippi and countersigned by an agent resident in Mississippi. Said performance bond shall be in force for the life of this Contract.

ARTICLE 7 RECORDS AND REPORTS

7.1 Inventory Management System: Merchants shall maintain an automated inventory management system on all food products delivered to MDOC Sites. This system will maintain quantities and values for balances, receipts, and issues of food products. Merchants agrees to provide MDOC access and training on the use of this system.

ARTICLE 8 TERM AND TERMINATION

8.1 Term: The term of this Agreement shall be for a period **September 7, 2022** and ending on **March 1, 2024** with the option to renew for two (2) additional twelve-month periods or one (1) twelve month period upon written agreement by both parties. The total number of renewal years permitted shall not exceed two (2) This Agreement is subject to annual appropriations as set forth in Section 9.5 of this Agreement.

Merchants guarantees their prices for the first twelve (12) months of this Contract. MDOC will conduct a vendor review annually in April to discuss food quality, vendor performance, and cost of food. MDOC may consider an increase in food product payment per day, if Merchants can provide substantive evidence and documentation to grant an increase. Food increase in price per day, if granted, may not exceed five percent (5%) of current year's price per day.

8.2 Termination for Convenience:

8.2.1 Termination. The Commissioner or designee may, when the interests of the MDOC so require, terminate this Contract in whole or in part, for the convenience of the MDOC. The Commissioner or designee shall give written notice of the termination to Merchants specifying the part of this Contract terminated and when termination becomes effective.

8.2.2 Merchants' Obligations. Merchants shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Merchants will stop work to the extent specified. Merchants shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Merchants shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Commissioner or designee may direct Merchants to assign Merchants' right, title, and interest under terminated orders or subcontracts to the MDOC. Merchants must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

8.3 Termination for Default:

- 8.3.1 *Default.* If Merchants refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Commissioner or designee may notify Merchants in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Commissioner or designee, such officer may terminate Merchants' right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Commissioner or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Commissioner or designee. Merchants shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods.
- 8.3.2 *Merchants' Duties.* Notwithstanding termination of the Contract and subject to any directions from the MDOC Chief Procurement Officer, Merchants shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Merchants in which the MDOC has an interest.
- 8.3.3 *Compensation.* Payment for completed services delivered and accepted by the MDOC shall be at the Contract price. The MDOC may withhold from amounts due Merchants such sums as the Commissioner or designee deems to be necessary to protect the MDOC against loss because of outstanding liens or claims of former lien holders and to reimburse the MDOC for the excess costs incurred in procuring similar goods and services.
- 8.3.4 *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Merchants shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Merchants to make progress in the prosecution of the work hereunder which endangers such performance) if Merchants has notified the Commissioner or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the MDOC and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Merchants shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Merchants to meet the Contract requirements. Upon request of Merchants, the Commissioner or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Merchants' progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the MDOC under the clause entitled, "Termination for Convenience".

8.3.5 *Erroneous Termination for Default.* If, after notice of termination of Merchants' right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the MDOC, be the same as if the notice of termination had been issued pursuant to a termination for convenience clause.

8.3.6 *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

8.4 Termination Upon Bankruptcy: This Contract may be terminated, in whole or in part, by MDOC upon written notice to Merchants, if Merchants should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Merchants of an assignment for the benefit of its creditors. In the event of such termination, Merchants shall be entitled to recover just and equitable compensation for satisfactory work performed under this Contract, but in no case shall said compensation exceed the total Contract price.

8.5 Liquidated Damages: When the Contractor is given notice of delay or non-performance as specified in Subsection 8.3.1, Termination for Default Clause, of this contract and fails to cure in the time specified, the Contractor shall be liable for damages for delay in the amount of \$500.00 per calendar day from date set for cure until either the State reasonably obtains similar commodities if the Contractor is terminated for default, or until the Contractor provides the supplies or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or non-performance is excused under Subsection 8.3.4, Excuse for Non-performance or Delayed Performance of the Termination for Default Clause of this contract, liquidated damages shall not be due the State. The Contractor remains liable for damages caused other than by delay.

ARTICLE 9 COMPENSATION

9.1 Cost Per Inmate Per Day: Merchants agrees to be compensated at a rate of \$2.86 per Inmate, per day based on the daily midnight count provided by the Inmate locator office. The price includes all packaging, handling, shipping charges and delivery to the destination shown herein. Price includes Freight on Board (F.O.B) to MDOC Sites.

Price is firm for the term of the Contract except that the State shall receive the benefit of any price decrease in excess of five (5%) percent. Merchants must provide written price reduction information within ten (10) days of its effective date.

9.2 Invoicing: Merchants shall invoice MDOC at the corresponding cost of \$2.86 per Inmate plus the required 13% per day (Inmate population plus 13% times the number of days per week) on a weekly basis based on the daily midnight count provided by the Inmate locator offices. The

billing cycle will be Saturday through Friday. The weekly invoice will contain the total population for the week, the corresponding price and the total for each Emergency. A detailed report showing the count by day for each Emergency will be provided as backup for the invoice. Merchants shall be paid upon submission of properly certified invoices to MDOC at the prices stipulated herein, after delivery and acceptance of goods, less deductions, if any, as provided. Invoices shall contain the Contract number, purchase order number and Merchants' Federal Employer Identification Number. An original and one (1) copy of the invoice shall be submitted. Failure to follow these instructions may result in delay in processing invoice for payment.

9.3 Taxes: MDOC is exempt from federal excise taxes and State and local sales or use taxes.

9.4 Payment: MDOC agrees to initiate the payment process to Merchants within fifteen (15) days from the date of the invoice and said payment is due to Merchants within forty-five (45) days of receipt by MDOC, unless the amount due is disputed by MDOC. MDOC agrees to pay any portion of the invoice that is not disputed by MDOC.

9.5 Annual Appropriations: Contracts in effect subsequent to June 30 of any calendar year is subject to the terms of the non-appropriation clause. This clause provides that any contract which extends past June 30 of any calendar year may be canceled for lack of funds. If this should become necessary MDOC is not obligated to order or pay for any item which is not covered by a purchase order dated prior to June 30.

9.6 E-Payment: Merchants agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The MDOC agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the MDOC within forty-five (45) days of receipt of invoice. (Mississippi Code Annotated § 31-7-301 *et seq.*)

9.6 USDA Commodities: Merchants agrees to maximize the utilizations of any food items obtained through the commodities program of the U.S. Department of Agriculture (USDA) or any other similar food source, which will be credited against the weekly invoice at a value determined by the USDA. There is no guarantee on the type, or quality of, commodities that will be available. These items will be utilized and have priority over purchased items.

9.7 Food Produced by MDOC: Merchants agrees to use farm products provided by the MDOC at a value to be determined by the MDOC with a credit issued for such products on the weekly invoice at a price determined weekly based on the USDA Fruit and Vegetable Terminal Markets Standard Report in Atlanta, Georgia adjusted for processing. Mississippi Prison Agricultural Enterprise (MPAE) will invoice Merchants weekly for these products. The MDOC produces vegetables in their farm operations, which are grown and processed by MPAE. These items will be utilized and have priority over purchased items.

ARTICLE 10 GENERAL TERMS AND CONDITIONS

10.1 Procurement Regulations: This Contract shall be governed by the Mississippi Public Procurement Review Board and the applicable provisions as stated in the Mississippi *Procurement Manual* a copy of which is available online at www.dfa.ms.gov

10.2 Trade Secrets, Commercial and Financial Information: It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

10.3 Stop Work Order

10.3.1 Order to Stop Work: The Chief Procurement Officer, may, by written order to Merchants at any time, and without notice to any surety, require Merchants to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Merchants, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Merchants shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- (a) cancel the stop work order; or,
- (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Contract.

10.3.2 Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Merchants shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Merchants price, or both, and the Contract shall be modified in writing accordingly, if:

- (a) the stop work order results in an increase in the time required for, or in Merchants' cost properly allocable to, the performance of any part of this Contract; and,
- (b) Merchants asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

10.3.3 *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

10.3.4 *Adjustments of Price:* Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this Contract.

10.4 Price Adjustment

10.4.1 *Price Adjustment Methods.* Any adjustments in Contract price, pursuant to a clause in this Contract, shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the additional performance;
- (b) by unit prices specified in the Contract;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Contract; or,
- (d) by the price escalation clause.

10.4.2 *Submission of Cost or Pricing Data.* Merchants shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3.115 (Cost or Pricing Data) of the *Mississippi Procurement Manual*.

10.5 Applicable Law: This Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Merchants shall comply with applicable federal, State, and local laws and regulations.

10.6 Availability of Funds: It is expressly understood and agreed that the obligation of the MDOC to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of State and/or federal funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDOC, the MDOC shall have the right upon ten (10) working days written notice to Merchants, to terminate this agreement without damage, penalty, cost or expenses to the MDOC of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

10.7 Independent Contractor Status: Merchants shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Merchants, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures,

employer and employee, or any similar such relationship between the State and Merchants. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Merchants hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Merchants. Merchants' personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Merchants nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDOC, and the MDOC shall be at no time legally responsible for any negligence or other wrongdoing by Merchants, its servants, agents, or employees. The MDOC shall not withhold from the Contract payments to Merchants any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to Merchants. Further, the MDOC shall not provide to Merchants any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

10.8 Representation Regarding Contingent Fees: Merchants represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Merchants bid or proposal.

10.9 Representation Regarding Gratuities: Merchants represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 (Gratuities) of the *Mississippi Procurement Manual*.

10.10 Compliance with Laws: Merchant understands that the MDOC is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and Merchants agrees during the term of the agreement that Merchants will strictly adhere to this policy in its employment practices and provision of services. Merchants shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

10.11 Transparency: This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. (See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated §79-23-1.) In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Merchants as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by State or federal law or outside the applicable freedom of information statutes, will be redacted.

10.12 Paymode: Payments by State agencies using the Mississippi Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided as directed by the State. These payments shall be deposited into the bank account of Merchants' choice. The State may, at its sole discretion, require Merchants to electronically submit

invoices and supporting documentation at any time during the term of this agreement. Merchants understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

10.13 Attorney's Fees and Expenses: Subject to other terms and conditions of this agreement, in the event Merchants defaults in any obligations under this agreement, Merchants shall pay to the MDOC all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the MDOC in enforcing this agreement or otherwise reasonably related thereto. Merchants agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Merchants.

10.14 Anti-Assignment/Subcontracting: Merchants acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Merchants' special skills and expertise. Merchants shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

10.15 Authority to Contract: Merchants warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

10.16 Confidentiality: Notwithstanding any provision to the contrary contained herein, it is recognized that MDOC is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. (Mississippi Code Annotated §§ 25-61-1 *et seq.*) If a public records request is made for any information provided to MDOC pursuant to the agreement and designated by Merchants in writing as trade secrets or other proprietary confidential information, MDOC shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MDOC shall not be liable to the Merchants for disclosure of information required by court order or required by law.

10.17 Failure to Deliver: In the event of failure of Merchants to deliver services in accordance with the Contract terms and conditions, the MDOC, after due oral or written notice, may procure the services from other sources and hold Merchants responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the MDOC may have.

10.18 Failure to Enforce: Failure by the MDOC at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall

not affect the validity of the Contract or any part thereof or the right of the MDOC to enforce any provision at any time in accordance with its terms.

10.19 Legal Action: The MDOC will be responsible for all legal actions filed which name the MDOC as a defendant, when MDOC personnel are involved or when applicable MDOC rules and regulations are at issue. Responsibility of defense of legal actions against Merchants will be that of Merchants.

10.20 No Limitation of Liability: Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Merchants for harm caused by the intentional or reckless conduct of Merchants or for damages incurred through the negligent performance of duties by Merchants or the delivery of products that are defective.

10.21 Notices: All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

Mississippi Department of Corrections
301 North Lamar Street
Jackson, MS 39201

The Merchants Company
d/b/a Merchants Foodservices
1100 Edwards Street
Hattiesburg, MS 39401

10.22 Oral Statements: No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by the MDOC and agreed to by Merchants.

10.23 Record Retention and Access to Records: Provided Merchants is given reasonable advance written notice and such inspection is made during normal business hours of Merchants, the MDOC or any duly authorized representatives shall have unimpeded, prompt access to any of Merchants' books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Merchants for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

10.24 Third Party Action Notification: Merchants shall give the MDOC prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Merchants by any entity that may result in litigation related in any way to this agreement.

10.25 Approval: It is understood that this Contract requires approval by the Public Procurement Review Board. If this Contract is not approved, it is void and no payment shall be made hereunder.

10.26 Recovery of Money: Whenever, under the Contract, any sum of money shall be recoverable from or payable by Merchants to the MDOC, the same amount may be deducted from any sum due to Merchants under the Contract or under any other Contract between

Merchants and the MDOC. The rights of the MDOC are in addition and without prejudice to any other right the MDOC may have to claim the amount of any loss or damage suffered by the MDOC on account of the acts or omissions of Merchants.

10.27 Right to Audit: Merchants shall maintain such financial records and other records as may be prescribed by the MDOC or by applicable federal and State laws, rules, and regulations. Merchants shall retain these records for a period of three years after final payment, or until they are audited by the MDOC, whichever event occurs first. These records shall be made available during the term of the Contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi Office of State Auditor, its designees, or other authorized bodies.

10.28 Contract Amendments: No amendment to this Contract shall be valid or enforceable unless in writing and executed by duly authorized representatives of both parties with the same degree of formality followed by the parties in executing and entering into this Contract.

10.29 Indemnification: To the fullest extent allowed by law, Merchants shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Merchants and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the MDOC's sole discretion upon approval of the Office of the Mississippi Attorney General, Merchants may be allowed to control the defense of any such claim, suit, etc. In the event Merchants defends said claim, suit, etc., Merchants shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Merchants shall be solely responsible for all costs and/or expenses associated with such defense, and the MDOC shall be entitled to participate in said defense. Merchants shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

10.30 Conflicts of Interest: Merchants covenants that it presently has no interest and shall not acquire any interest, direct or indirect which would conflict in any manner or degree with performance of the Contract and no person having any such interest shall be employed. In addition, no officer, elected official, agent or employee of MDOC and no member of its governing body shall participate in any decision relating to this agreement which affects his/her personal interest or any association which he/she is directly or indirectly interested or has any personal or pecuniary interest.

10.31 Waiver: No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by Contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will

void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

10.32 Severability: If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

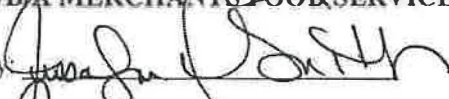
10.33 Extent of Contract: This agreement, the IFB-MAGIC RFx: 3160005171, Merchants' IFB Response which are all attached to this agreement and incorporated herein represent the entire Contract between MDOC and Merchants and supersede all prior negotiations, representations or agreements, whether written or oral.

10.34 Survival: The provisions of this Contract which expressly or impliedly contemplate or require performance after the termination or expiration of operations hereunder shall survive such expiration or termination.

10.35 Headings: Headings and titles of sections in this Contract are included herein for convenience of reference only and shall not constitute a part of the Contract for any other purpose and will not affect in any way the meaning or interpretation of this Contract.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives the day and year first above mentioned.

**THE MERCHANTS COMPANY
D/B/A MERCHANTS FOOD SERVICE**

By: 
Date: 9.13.22

WITNESS: _____

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS**

By: 
Date: 8/15/22

WITNESS: _____

ATTACHMENT 1

**MDOC INVITATION FOR BID
IFB-MAGIC RFx: 3160005171**

ATTACHMENT 2

MERCHANTS' RESPONSE

TO

MDOC INVITATION FOR BID
IFB-MAGIC RFx: 3160005171