

**PARTICIPATING ADDENDUM
US Communities**

Statewide Food Procurement Program

North Carolina State University
(hereinafter "Lead Agency")

Master Agreement
Contract Number: #42356

Premier Healthcare Alliance (in partnership with US Foods, Inc)
(hereinafter "Contractor")

and

State of Arkansas
(hereinafter "Participating State/Entity")

This Participating Addendum ("PA") is by and between the State of Arkansas, acting by and through the Office of State Procurement (hereinafter referred to interchangeably as "OSP", "the State" or "Participating State/Entity"), and Premier Healthcare Alliance, L.P., in partnership with US Foods, Inc. (hereinafter referred to collectively as "Contractor"), (hereinafter, the State of Arkansas and the Contractor are referred to collectively as "the Parties" or individually as a "Party).

1. **SCOPE:** By the US Communities contract for Statewide Food Procurement Program by North Carolina State University, contract number 13924 (the "Master Agreement"), the State of Arkansas is eligible to procure services and commodities, as specified in this PA, for use by state agencies and other entities located in the State of Arkansas as authorized by Arkansas law to utilize cooperative contracts. Contractor may incorporate changes to their services offering, however; any changes **must** be within the scope of services awarded. Contractor may not add services not included in the Contractor's response to the solicitation.

2. **PARTICIPATION:** All eligible purchasers within the State of Arkansas including State agencies, and local public procurement units or political subdivisions are authorized to purchase services and commodities under the terms and conditions of this PA.

3. ORDER OF PRECEDENCE:

- A. This PA;
- B. The Master Agreement;
- C. The Solicitation, including all Addendums; and
- D. Contractor's response to the solicitation.

These documents **shall** be read to be consistent and complementary. Any conflict among these documents **shall** be resolved by giving priority to these documents in the order listed above, including but not limited to conflicting order of precedence provisions. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State and **must** be in writing and incorporated in or attached to the Master Agreement as an Exhibit, Attachment, Appendix, or Amendment. Notwithstanding the foregoing, ordering documents (purchase orders) may contain transaction-specific terms and each ordering document that is accepted by the Contractor **shall** become a part of this PA as to the products and services listed on the ordering document only. No other terms and conditions **shall** apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or in similar documents subsequently provided by the Contractor (unless such terms are referenced in the Master Agreement).

4. **INDIVIDUAL CUSTOMER:** Each state agency and political subdivision, as a Participating Entity, and as set forth in Section 2 above, can participate in the Statewide Food Procurement Program, and will be treated as if they are individual customers. Except to the extent modified by this PA, each Participating Entity will be responsible to follow the terms and

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conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead Agency has in the Master Agreement. Each Participating Entity will be responsible for their own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor shall apply the charges to each Participating Entity individually.

5. **CHANGES:** The following changes to the terms and conditions are as follows:

a. Payments and Invoice Provisions: Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the Participating Entity. The Participating Entity may not be invoiced in advance of delivery and acceptance of any products or services. Payment will be made only after the Contractor has successfully satisfied the ordering Participating Entity as to the goods and/or services purchased or rented. Contractor should invoice the ordering Participating Entity by an itemized list of charges. Purchase Order Number and/or Contract Number should be referenced on each invoice.

Payments shall be submitted to the Contractor at the address shown on the invoice. Payment shall be tendered to the Contractor within thirty (30) days of the date of invoice. After the sixtieth (60th) day from the date of the invoice, unless mutually agreed to, interest shall be paid on the unpaid balance due to the Contractor at the rate of one half of one percent per month in accordance with Arkansas Code Annotated §19-11-224. The Participating Entity shall make a good-faith effort to pay within thirty (30) days after date of invoice. Payments may also be made via a Purchasing Entity's "Purchasing Card."

All invoices should be forwarded to:

Agency Name
Attention: Accounts Payable
Address
City, Arkansas Zip Code

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- b. Purchase Order Instructions:** Except to the extent modified by this PA, all Participating Entities issuing valid purchase orders will be bound by the terms and conditions of the US Communities Master Agreement including, without limitation, the obligation to pay the Contractor for services and commodities provided. The Parties acknowledge and agree that orders submitted to the Contractor from a Participating Entity through the Participating Entity's business purchasing card (p-card) are authorized purchase orders under the US Communities Master Agreement.
- c. Price Agreement Number:** All purchase orders issued by the Participating Entity within the jurisdiction of this PA shall include the US Communities Contract #13924, agency name, address, name of contact person and phone number.
- d. Reporting:** The Contractor agrees to provide a quarterly report to the Office of State Procurement, attention of Chris Reynolds, within thirty (30) days following the quarter being reported. Reports should include the following data: agency name and address, product description, quantity, unit and extended prices.
- e. Record Retention:** The Contractor shall be required to maintain all pertinent financial and accounting records and evidence pertaining to all State of Arkansas transactions under this PA in accordance with generally accepted principles of accounting and other procedures specified by the State of Arkansas. Access will be granted upon request, to State or Federal Government entities or any of their duly authorized representatives.
- Financial and accounting records shall be made available, upon request, to the State of Arkansas' designee at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- f. Delivery:** Delivery shall be FOB.
- g. Taxes:** Personal Property tax will not be charged to Arkansas state agencies.
- h. Cancellation:** The State may cancel this PA for any reason, with or without cause, by giving the Contractor and US Communities written notice of such cancellation thirty (30) days prior to the date of cancellation. Any purchase orders issued prior to cancellation may not be canceled.
- i. Governing Law:** The laws of the State of Arkansas shall govern this agreement.
- j. Venue and Jurisdiction:** Venue for any claim, dispute, or action concerning an order placed against the contract shall be Pulaski County, Arkansas.
- k. Sovereign Immunity:** Nothing under this agreement or the Master Agreement shall be deemed or construed as a waiver of the State's right to sovereign immunity.
- l. Disclosure:** Under Arkansas law, OSP is required to have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor **must** submit the disclosure form prior to entering into this Addendum. Failure to make any

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disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this PA. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the State.

- m. **Contractor Registration:** In order to receive payment, Contractor **must** register online at <https://www.ark.org/vendor/index.html>
- n. **Restriction of Boycott of Israel:** By signing this PA, Contractor agrees and certifies that they do not boycott Israel, and if selected, will not boycott Israel during the aggregate term of the contract.
- o. **For Services Only:**
 - 1. **Equal Opportunity Policy.** In compliance with Arkansas Code Annotated § 19-11-104, if a state agency is purchasing services, OSP is required to have a copy of the Contractor's *Equal Opportunity (EO) Policy* prior to entering into this PA. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov or Contractor may submit a hard copy with this Addendum. The submission of an *EO Policy* to OSP is a one-time requirement. Contractor is responsible for providing updates or changes to its policy, and for supplying *EO Policies* upon request to other State agencies that **must** also comply with this statute. If Contractor is not required by law to have an *EO Policy*, Contractor **must** submit a written statement to that effect.
 - 2. **Prohibition of Employment of Illegal Immigrants.** Pursuant to Arkansas Code Annotated § 19-11-105, if a state agency is purchasing services, OSP is required to have a certification on file from the Contractor stating that the Contractor does not employ or contract with illegal immigrants. The Contractor **must** certify online at www.arkansas.gov/dfa/procurement that the Contractor does not employ or contract with any illegal immigrant prior to entering into this PA.
 - 3. **Performance Standards** Under Arkansas law, all state agencies, boards, commissions, and institutions of higher education **must** include performance standards when purchasing services. Performance standards **shall** be mutually agreed upon by the parties hereto for any services purchased.
- p. **Certifications:** Contractor **shall** promptly provide any and all certifications and supporting documents, and in the time and manner, requested by the State of Arkansas.
- q. **Inspection and Acceptance:** In the event a Participating Entity leases or purchases products from the Contractor, the Participating Entity will provide notice to the Contractor of any defects no later than the fifth (5th) business day following the date of delivery. Such notice of defects may be delivered electronically or in writing, at the discretion of the Participating Entity. If the Participating Entity does not provide notification of defects and/or non-acceptance of

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the products to the Contractor within thirty (30) days of the date of delivery, the products **shall** be deemed accepted by the Participating Entity.

r. Indemnification:

The following indemnification clause replaces in its entirety the Indemnification clause specified in the Master Agreement.

INDEMNIFICATION - Premier and USF each severally (and not jointly) agree, upon receipt of written notice of a claim or action, to defend the claim or action, or take other appropriate measures, to indemnify, and hold harmless, the State, its officers, its agents and its employees from and against all claims and actions for bodily injury, death or property damages caused by its fault, or the fault of its officers, its agents or its employees. Premier and USF are each obligated to indemnify only to the extent of their own fault, and the fault of their own officers, agents, or employees. However, Premier and USF shall have no obligation as set forth above with respect to any claim or action from bodily injury, death or property damages arising out of the fault of the State, its officers, its agents or its employees. Language in this clause **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

- s. Arkansas State Claims Commission:** The Parties acknowledge that any claims, liability, costs, expenses, demands, settlements, or judgments arising from the negligence, acts or omissions of a Participating Entity or its employees or agents in the performance of this PA must be presented to the Arkansas State Claims Commission ("Claims Commission"). Participating Entity agrees that: (1) it will cooperate in the defense of any third-party claim to the Claims Commission brought against Contractor seeking damages or relief; (2) it will cooperate in good faith should Contractor present any claims to the Claims Commission; and (3) it will not take any action to frustrate or delay the prompt hearing on claims, although it reserves the right to assert all claims and defense available to it.
- t. Administrative Fee Disclosure:** The Participating State/Entity acknowledges that, in consideration of the administrative services rendered in connection with the group purchasing program, participating vendors from which Participating Entity purchases goods or services will pay an administrative fee of three percent (3%) or less of the purchase price of the goods or services provided by that vendor and such fee may be apportioned between Premier, its affiliates and U.S. Communities pursuant to separate written agreements. In the event there are any exceptions to the foregoing statement, they will be noted in a report located in Premier's online member portal. On an annual basis, Premier or its affiliates shall provide Participating Entity written notice of the amount of administrative fees received directly from vendors with respect to purchases made by or on behalf of Participating Entity.
- u. Terms:** The State is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with this PA and/or Arkansas law.

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6. **PRIMARY CONTACTS:** The primary contacts for this participating addendum are as follows (or their named successors):

Lead Agency

Name:	North Carolina State University
Address:	North Carolina State University Campus Box 7212 Raleigh, NC 27695-7212
Telephone:	919-515-6890
E-Mail:	Jessica_dalton@ncsu.edu

Contractor

Company Name:	Premier Food Service
Contact Person	Jon Garrett
Address:	13034 Ballantyne Corporate Place Charlotte, NC 28277
Telephone:	877-981-3312
Fax:	
E-Mail:	Jon_garrett@premierinc.com

Arkansas Contact

Company Name:	US Foods
Contact Person	Harold Fowler
Address:	9899 W. Higgins Road, Suite 800 Rosemont, IL 60018
Telephone:	270-519-4508
Fax:	
E-Mail:	Harold.fowler@usfoods.com

Participating Entity

Name:	Chris Reynolds, Statewide Procurement Specialist
Address:	State of Arkansas DFA-Office of State Procurement 1509 W. 7 th Street, Suite 300 Little Rock, AR 72201
Telephone:	501-683-6636
E-Mail:	chris.reynolds@dfa.arkansas.gov

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This Participating Addendum and Contract #42356 (administered by North Carolina State University) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: State of Arkansas	Contractor: Premier Healthcare Alliance
By: 	By: 
Name: Randy Wright	Name: Jon Garrett
Title: Deputy Director of OSP	Title: VP Foodservice
Date: 4/20/18	Date: 4/19/2018
	US Foods, Inc.
	By: 
	Name: Laurie Oare
	Title: SVP, Field Operations, National Sales
	Date: 4/18/2018