

## AGREEMENT

This Group Purchasing Organization Agreement (“Agreement”), dated \_\_\_\_\_, 2023 is by and between ADVANCED PURCHASING CO., LLC, an Ohio limited liability company, (“APC”) and \_\_\_\_\_ (“Client”).

### WITNESSETH:

**WHEREAS**, APC provides a wide variety of managerial and advisory services to its clients with its primary objective being to significantly reduce the purchasing costs to its clients by soliciting bids from potential suppliers, communicating proposals from potential suppliers to clients and negotiating a client’s requirements; and

**WHEREAS**, Client seeks to retain the services of APC and APC desires to provide services to Client, upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term: This Agreement covers a two school year term. The initial term commenced on August 1, 2022. It will terminate upon the expiration of the contract period ending on July 31, 2024.
2. APC Duties and Services: APC will provide the following services as a vendor to Client:
  - (a) coordination and implementation of a reasonably customized proposal procedure with vendors and/or suppliers of food and non-food foodservice products;
  - (b) compilation and evaluation of the results;
  - (c) documenting the performance history of vendors and suppliers to assist Client with enhanced purchasing practices;
  - (d) conducting searches for suppliers of new food and non-food products specified by Client;
  - (e) soliciting proposals with pricing from vendors and/or suppliers of food and non-food Products;
  - (f) providing electronic version and/or hard copies of the proposals from vendors and/or suppliers;
  - (g) tracking rebates as requested;
  - (h) performing such other related services as may reasonably be requested by Client provided such services are consistent with the services described herein;

(i) updating and maintaining proposals on requested products per Client requests as well as new products in the marketplace; and

(j) reporting to the Client information learned in industry workshops and seminars, at the discretion of APC.

Client acknowledges and understands that APC cannot guarantee cost savings to Client with respect to food and non-food products purchased during the term of this Agreement and that APC is not responsible for the condition, quality and quantity of products sold to Client or for the delivery of such products.

3. Client Obligations and Responsibilities: During the term of this Agreement, Client agrees to:

(a) provide APC with the following information: (1) desired food and non-food product types; (2) quantities needed of desired food and non-food product types; and (3) such other information which is customarily included in food and non-food purchase orders within the industry;

(b) make purchases consistent with the terms offered from the APC vendor contracts including but not limited to minimum quantities for delivery and vendor orders. The client school system is responsible for its own procedures for deviating from specific items awarded;

(c) be responsible for adhering to all required federal, state and local laws, regulations and executive orders pertaining to procurement, acquisition, preparation, service, menus, and nutritional requirements, as well as any and all other food and food service requirements, including but not limited to reviewing any literature on products, following instructions from the food suppliers and handling of all products;

(d) inform APC of issues with products and/or vendors; *provided, however,* that APC reserves the right to limit its involvement with resolution in its sole discretion; and

(e) be responsible for review of APC procedures, vendor solicitations, vendor contracts and any other relevant material. APC operates as a vendor for the client school system and it is further understood that by the terms stated and agreed upon by the bidder in the Request for Proposal/Contract that this agreement shall serve as the contract between the school system and the winning/awarded bidders. For all intents and purposes, the name of the client school system will be deemed to have replaced APC in the RFP documents.

(f) pricing provided to Client is for child nutrition programs and support only. Use of the pricing for other purposes is prohibited.

The Client acknowledges and understands that retaining the services of APC is only part of the Client's procurement process. It is the Client that is solely and ultimately responsible for following all procurement laws, rules and regulations.

4. Compensation: Within thirty days (30) days following the date of APC's invoice, Client shall pay to APC a fee of \$350.00. This two-year agreement is \$350.00 per year less a one-time Covid-19 discount of \$350.00. Client acknowledges and understands that as part of APC's total compensation, APC receives a flat rebate from participating vendors on all of the Client's purchases from that vendor. APC receives no additional significant revenue or gifts from vendors or suppliers to the vendors.

The Client will receive from the participating suppliers one percent (1%) bill-back (rebate) on all purchases made through the Various Foods & Non-Foods & Paper, Cleaning and Disposables Items Bid at the end of each period. There are two rebate periods per school year from each participating distributor. The Client shall receive no bill-back (rebate) on items purchased through any other bid or service offered by APC.

5. Disclaimer of Warranty: APC makes no independent warranty as to the quality, condition, nutritional information, handling of products, suppliers, distributors, shipments or compliance with USFDA requirements. It is the sole responsibility of the Client to ensure compliance with all rules and regulations and to thoroughly investigate the integrity of each supplier and the products received pursuant to Client purchases. In the event of any product recall, the Client agrees to seek any remedy directly from the supplier or distributor issuing such recall. The Client acknowledges and agrees that APC has no control over or liability for product safety.

6. Indemnification: To the extent of the public liability policy limits of the policies referred to in Section 7, APC will not be liable for, and the Client will indemnify, defend and hold APC harmless from, any obligations, claims, demands, losses, costs and expenses (including court cost and reasonable attorneys' fees), incurred by APC by reason of the Client's breach of this Agreement or the negligence or willful misconduct of the Client, its agents, employees, independent contractors or representatives.

The Client's sole source of remedy for any obligations, claims, demands, losses, costs and expenses incurred by the Client shall be the suppliers and distributors from which the Client ultimately obtains its products.

7. Insurance: The Client will, at its own expense, obtain and maintain throughout the term of this Agreement Commercial General Liability insurance on an occurrence coverage form providing protection in the amount of at least one million dollars (\$1,000,000) per occurrence and annual aggregate against any claims, suits, losses or damages arising as a result of this Agreement. The aforementioned insurance limits will be referenced on an ACCORD form certificate of insurance or its equivalent.

8. Limitation of Liability: IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR OTHER INDIRECT, SPECIAL,

INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL APC BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE FEES AND REBATES IT RECEIVES PURSUANT TO THIS AGREEMENT.

9. No Agency: Each party shall act as an independent contractor in carrying out its obligations under this Agreement. Nothing contained in this Agreement shall be construed to imply a franchise, joint venture, partnership or principal/agent relationship between the parties, and neither party by virtue of this Agreement or otherwise shall have the right, power, or authority or act or create any obligation, express or implied, on behalf of the other party. APC at all times shall be a vendor and not an agent of Client.

10. Amendments: This Agreement may be amended from time to time as the parties desire so long as such amendments are in writing and executed by all parties hereto.

11. Ethics Compliance: The Client agrees not to, and agrees to cause its employees not to, solicit or accept anything of value from vendors or suppliers that is of such a character as to manifest a substantial and improper influence over the Client or its employees with respect to their duties as school officials.

12. Entire Agreement: This Agreement contains the entire agreement between the parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written unless Client and APC have also entered into contract for consulting services through the APC Consulting contract.

13. Termination: If at any time during the term of this Agreement Client chooses to withdraw from the program, the Client must notify APC in writing and upon request, the Client fee will be refunded on a prorated basis.

14. Severability: If for any reason any provision of this Agreement is deemed by a court of competent jurisdiction to be legally invalid or unenforceable in any jurisdiction to which it applies, the validity of the remainder of the Agreement will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law, and, in its modified form, such provision will then be enforceable and enforced.

15. Counterparts: This Agreement may be signed in counterparts which, when taken together, will constitute a single integrated agreement. Signed copies of the Agreement sent by electronic means will be considered the same as original signed versions.

16. Legal Authority: Each person signing this Agreement represents that he or she has the legal authority and has been directed to sign this Agreement on behalf of the entity where such name appears below.

**[Remainder of Page Intentionally Left Blank]**

**IN WITNESS, WHEREOF**, the parties hereof have executed this Agreement as of the day and year above written.

**ADVANCED PURCHASING CO, LLC**  
(Organization)

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Date of Signature)

**Stas Georgiadis**  
(Printed Name of Signatory)

**President**  
(Title of Signatory)

\_\_\_\_\_  
(Organization/Name of School)

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Date of Signature)

\_\_\_\_\_  
(Printed Name of Signatory)

\_\_\_\_\_  
(Title of Signatory)