ECONOMIC PRICE ADJUSTMENT ("EPA") – ACTUAL MATERIAL COSTS FOR SUBSISTENCE FRESH FRUITS & VEGETABLES ("FF&V" or "Produce") AND SHELL EGGS MODEL

A. Warranties. For any items covered by this EPA language, the Contractor warrants that:

1. Contract Unit Price and the components of the Contract Unit Price, i.e. Delivered Price and Distribution Price, shall not include allowances for any portion of the contingency covered by this language; and

2. Price adjustments requested during the performance of the contract shall be computed in accordance with the provisions of this language.

B. Definitions. As used throughout this language the term:

1. "**Contract Unit Price**" means the total price per unit of a particular item charged to the Government for a product delivered to customers under this contract. The Contract Unit Price consists of two separate and distinct components: 1) Delivered Price, less Rebates/Discounts, and 2) Distribution Price. The unit price sum of these two components shall be rounded up or down to the nearest cent, to determine the Contract Unit Price.

2. "**Delivered Price**"

(i) "Delivered Price" means the commercial manufacturer, grower, or private label holder price per unit charged to the Contractor, inclusive of standard freight to the Contractor's facility/facilities, for the purchase of a representative quantity of the item as compared to orders under this contract. Delivered Price is the manufacturer, grower, or private label holder price that is input into the Contractor's purchasing system as the starting basis for its pricing to customers prior to applying or deducting any additional costs or expenses, such as distribution, overhead, profit, rebates/discounts, or other costs/expenses stemming from separate financial arrangements. Delivered Price shall be substantiated with an actual invoice paid by the Contractor. In limited circumstances, quotations may be used to substantiate a Delivered Price, but only with specific approval of the Contacting Officer. The Delivered Price shall not include costs to be included in the Distribution Price.

(A) **Redistributor Exception**:
On a case by case basis, for a specific item or stock keeping unit ("SKU"), a contiguous United States (CONUS) redistributor's most recent commercial price per unit, inclusive of standard freight to the Contractor's facility/facilities to the Contractor of a representative quantity of product as compared to orders under the contract may be used to establish Delivered Price. A redistributor's commercial price may only be used to establish Delivered Price when the redistributor's price for the quantity ordered is equal to or lower than a manufacturer's, grower's, or private label holder's current market price for a representative quantity of product inclusive of rebates/discounts. The Contracting Officer must specifically approve the use this exception. When seeking approval for the use of this exception, at a minimum, the Contractor must supply invoices from the redistributor. Quotes from the redistributor are unacceptable. Additional supporting documentation (e.g., published price list, manufacturer letter, or similar proof of price comparison) may be required. The determination of whether the supporting documentation offered is sufficient to establish a manufacturer's, grower's, or private label holder's current market price, as well as the decision to permit the use of this exception, rests solely with the Contracting Officer.

3. "**Distribution Price(s)**" means the firm-fixed price portion of the Contract Unit Price, offered as a dollar amount per unit of issue, rounded up or down to the nearest cent. The Distribution Price component includes all costs associated with the Contractor's performance that are not included in the Delivered Price, including, but not limited to: human resources, insurance, special packaging, overhead, profit, transportation from the Contractor's facility or other place of performance to the end customers, split-case fees, ancillary in-house processing fees, subcontractor costs, etc.

4. "**Grower**" means the business concern that raises produce for marketing.

5. "**Manufacturer**" mean the business concern that, with its own facilities, performs primary activities of processing or transforming agricultural products into the end item being acquired.

6. "**Ordering Catalog**" means the electronic listing of items and Contract unit prices available for ordering under this contract.

7. "**Ordering Period**" means from Sunday at 12:00 AM (Eastern Time (ET), standard or daylight as applicable) through 11:59 PM on the second Saturday following.(i.e. the 14th day).

8. **"Private Label Holder"** means:

   (i) A manufacturer or grower with whom the Contractor holds an ownership and/or financial interest, or ownership and/or financial interest in a specific item(s) produced by a manufacturer or grower;

   (ii) An entity holding an intellectual property interest, whether by ownership or license, in the label under which product is being sold in the commercial marketplace; or

   (iii) An entity holding exclusive marketing and/or sales authority of a product, or one holding property rights in a proprietary product formula.

9. "**Rebates/Discounts**" means all rebates, discounts, product allowances, food show discounts, early payment discounts (other than qualifying early payment discounts as may be defined elsewhere in this contract), and any other rebates, discounts, economic incentives, or similar financial arrangements available at the manufacturer, grower, private label holder, or redistributor level that ultimately reduces the Contractor's price paid for a product supplied under the contract. In accordance with this language as well as other provisions of this contract, and subject to any applicable exceptions, all rebates/discounts shall be passed on to the Government via a reduced catalog price for the item to which the rebates/discounts pertain (i.e. "off invoice"). Any rebates/discounts that cannot be applied as an up-front price reduction must be submitted to the Contracting Officer via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item, including contract number, call number, purchase order number and contract line item number ("CLIN").

10. "**Redistributor**" means an entity independent of the contractor that operates in the existing commercial marketplace and from which the contractor purchases product for purposes of consolidating quantities and/or obtaining lower delivered prices. Examples may include: brokers, dealers, distributors, and buying groups.

11. "**Standard Freight**" means the published list price or prevailing market rate for transportation of items ordered under this contract from the manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies) to the Contractor's facility/facilities. Standard Freight must be documented in an invoice; however, quotes may be an acceptable form of substantiation in limited circumstances and if authorized by the Contracting Officer. Standard freight may include certain ancillary costs associated with transportation which are consistent with commercial practice in the produce industry, including, but are not limited to, pallets, temperature recording devices, Tectrol, etc.

    (i) In the event that the Contractor picks up its own product directly from a manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies) on an F.O.B Origin basis, or arranges for delivery transportation from a third party source other than the manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies), the standard freight cost shall be based on market tariffs/conditions and consistent with prevailing market rates. At no time shall that cost exceed the manufacturer's, grower's, private label holder's, or redistributor's, or such entity's carrier's freight price normally payable by the Contractor for inbound shipments of such products and quantities to the Contractor's facility(ies).

C. Price adjustments.

1. General.

(i) All Contract Unit Prices shall be fixed and remain unchanged until changed pursuant to this language or other applicable provision of the contract. Only the Delivered Price component of the Contract Unit Price is subject to adjustment under this section. After the first ordering period, if the Contractor's Delivered Price changes for any or all Contract Unit Prices, the Contract Unit Price shall be changed in the next period's ordering catalog upon the Contracting Officer's approval of the Contractor's request, which must be submitted in accordance with paragraph (iii) below, by the same dollar amount of the change in the Delivered Price, subject to the limitations in paragraphs C.2 and D, below. Any price changes approved by the Contracting Officer shall become effective at the beginning of the next ordering period. All ordering catalog unit prices computed in accordance with this section and in effect when an order is placed shall remain in effect for that order through delivery. DLA Troop Support will be charged the Contract Unit Price in effect at the time the order is placed, regardless of any changes in the Contract Unit Price occurring before delivery or in any subsequent ordering period.

(ii) Delivered Prices included in the catalog shall equal the Contractor's last receipt price for the item as reflected in an invoice (or quote in limited circumstances) for a representative quantity compared to typical Government purchases. For the purpose of the contract catalog, the "last receipt price" means the price of the product charged on the most recent invoice at the time the price change is requested. For example, if by Wednesday (i.e. the day price change requests are due to the Contracting Officer) the Contractor had recently received two invoices for the product in question, one on Monday and one on Tuesday, then the most recent invoice is the one from Tuesday (assuming it contains a representative quantity as described above). It is important to note that a Delivered Price must in almost all cases be justified using an invoice as described in this paragraph. Use of a quote is only permitted in extremely limited circumstances, such as when an item has not been purchased before by the Contractor or the price of the item is stale due to seasonality and other similar issues. Outside of those limited circumstances, which will be reviewed and approved by the Contracting Officer on a case-by-case basis, a Delivered Price will not be substantiated by using the price of an item that is the latest to arrive at the Contractor's facility but does not yet have an invoice to support it. Ultimately, the invoice (or quote in limited circumstances) justifying the Delivered Price request is subject to review by the Contracting Officer at the time the request is made.

(iii) Updates to the Delivered Price: All notices and requests for new item Delivered Prices and price changes shall be submitted bi-weekly, no later than 12:00 p.m. (Noon) Eastern Time on Wednesday to be effective in the following ordering period's ordering catalog. Invoices submitted to support price change requests shall also identify all rebates/discounts that will be subtracted from the requested delivered prices when calculating the revised contract unit prices that would go on the catalog. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange ("EDI") 832 transaction set when using STORES or an update to FFAVORS web. The change notice shall include the Contractor's adjustment in the Delivered Price component of the applicable Contract Unit Price. Upon the Contracting Officer's acceptance of such EDI 832/FFAVORS Web price changes in accordance with paragraph (v) below, the price change transaction sets will post in the next ordering period's ordering catalog and each Contract Unit Price shall be changed by the same dollar amount of the change in the Delivered Price in the next ordering period's ordering catalog.

(iv) All price changes, and catalog contract prices, are subject to review by the Government. The Contracting Officer may, at any time, require the submission of supporting data to substantiate any requested price change or the requested continuation of the pre-existing price for any item, including prices applicable to prior ordering periods. Upon notice from the Contracting Officer that supporting data is required, the Contractor shall promptly furnish to the Government, all supporting data, including, but not limited to,

invoices, quotes, price lists, documentation regarding rebates/discounts, and any other substantiating information from the Contractor and any and all of its suppliers in the supply chain, including the manufacturer, grower, private label holder, or redistributor.

(v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this provision shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by 9:00 a.m. Eastern Time each Friday that a price or a price change request is being questioned or has been found to be erroneous, the price change(s) will post to the ordering catalog effective the beginning of the following orderingperiod. The posting of updated prices in the ordering catalog, calculated in accordance with this section, constitutes a modification to this contract. No further contract modification is required to effect this change. Any changes that post to the ordering catalog do not constitute a waiver of any of the rights delineated elsewhere in the Solicitation, any resulting contract(s), or otherwise by law or regulation.

(vi) Should the Contracting Officer determine that, or question whether, a price change request contained an erroneous Contract Unit Price or price change, or cannot otherwise determine the changed price(s) to be "fair and reasonable," such as when the changed price(s) is(are) higher than delivered prices for items of comparable quality which are reasonably available to the Government or Contractor from other sources, the Contracting Officer will so advise the Contractor, prior to 9:00 a.m. Eastern Time on Friday. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct, in writing, that the item in question be retained on the catalog at the most recent previously-approved price consistent with current market conditions. In the alternative, the Contracting Officer may authorize the removal of an item.

(vii) In the event of a price change not posting or an ordering catalog Contract Unit Price not computed in accordance with this section, resulting in an incorrectly increased or decreased Contract Unit Price, upon discovery of such occurrence the Contractor shall immediately notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog. In the event of an erroneous price increase in the ordering catalog, the Contractor shall submit a refund, including interest if applicable, for any amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the ordering catalog, the Contractor may submit a request for an equitable adjustment in the amount of the undercharge for consideration by the Contracting Officer. The request may be entertained if the Contractor can demonstrate to the satisfaction of the Contracting Officer that the error did not result from the fault or negligence of the Contractor. The Contractor will not be entitled to reimbursement if the undercharge was the fault or negligence of the Contractor.

2. Limitations. All adjustments under this section shall be limited to the effect on Contract Unit Prices of actual increases or decreases in the Delivered Prices for material. There shall be no upward adjustment for—

(i) Supplies for which the Delivered Price is not affected by such changes;

(ii) Changes in the quantities of materials; and

(iii) Increases in Contract Unit Prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract Unit Price definition in this provision) and/or increases in Contract Unit Prices that the Contracting Officer determines are not fair and reasonable.

D. Upward ceiling on economic price adjustment. The aggregate of Delivered Price increases for each item under this section during the entire contract period shall not exceed 90 % for Department of Defense (DoD) Troop and 90 % for United States Department of Agriculture (USDA) School & Tribal Reservation customers, of the initial contract Delivered Price, except as provided below:

1. If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this language will be required that will exceed the Delivered Price ceiling for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. In the event that the latest actual market price for an item does result in a Delivered Price that exceeds the allowable ceiling price under the contract, the Contractor shall immediately notify the Contracting Officer in writing or via its EDI 832/FFAVORS Web price change request no later than the time specified in paragraph C.1.(iii), above. With either such notification, the Contractor shall include a revised ceiling that the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

2. The price change shall be posted for the following period's ordering catalog. If an actual increase in the Delivered Price would raise the price for an item above its current ceiling, and the Contracting Officer and Contractor cannot negotiate a fair and reasonable price below the ceiling or if the Contracting Officer does not issue a contract modification to raise the ceiling, the Contracting Officer may reject the price change and direct that the item be retained on the contract at the last approved price. If the Contracting Officer decides to retain the item, the contractor shall continue to perform with the item at the last approved price. In the alternative, the Contracting Officer may authorize the removal of an item. The decision regarding whether to modify the contract, retain the item, or remove the item rests solely with the Contracting Officer.

E. Downward limitation on economic price adjustments. There is no downward limitation on the aggregated percentage of decreases that may be made under this section.

F. Price Audit. The Contracting Officer may require the Contractor to submit invoices and other documentation from all subcontractors at all tiers and/or all suppliers or persons in the Delivered Price supply chain, up to and including the grower, manufacturer, and/or redistributor, for the purpose of confirming Delivered Prices charged to the Government, as well as to substantiate all rebate/discounts applicable to orders under the contract. In performing the price audit, the Government shall have the right to examine books, records, documents and other data, to include commercial sales data, that the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this section and any other terms and conditions of the contract. Such price audits may occur up to twice a year (except as provided for below) until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation ("FAR"), whichever is earlier. In addition to price audits, the Government may conduct additional examinations of records, as required by the Contracting Officer to ensure contract compliance.

G. Final invoice. The Contractor shall include a statement on the final invoice for each order that the amounts invoiced hereunder have applied all decreases required or authorized by this section.

H. Disputes. Any dispute arising under this section shall be determined in accordance with the "Disputes" clause of the contract.