

COMMONWEALTH OF KENTUCKY
KENTUCKY DEPARTMENT OF AGRICULTURE
Division of Food Distribution

PROGRAM ADMINISTRATION AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of July 2007, by and between the Commonwealth of Kentucky, Department of Agriculture, Division of Food Distribution, hereinafter referred to as the Department, and

(Name of Recipient Agency)

hereinafter referred to as the Second Party. This agreement shall remain in effect in perpetuity and amended by the Department as necessary. It will be the responsibility of the Second Party to notify the Department of any changes of Administrator within fifteen (15) days of the effective date of the new administrator assuming office via the Change of Administrator form (KY-FD-41). The Second Party shall maintain this agreement with amendments and/or attachments for the term of this agreement.

WITNESSETH, THAT:

Whereas, the Department, in the exercise of its lawful duties, has determined that the above-named Second Party meets the requirements of 7 CFR Part 250.11 and is approved to receive USDA Donated Foods under Section 416, Section 32, Section 4(a), Section 6, Section 14 and Section 709 of PL 100-237:

Whereas, the Second Party is available, willing and qualified to perform this function, and the Department desires that the Second Party perform this function;

Now therefore, it is hereby and herewith mutually agreed by and between the parties hereto as follows:

1. The Second Party agrees to perform the services as herein described with particularity as follows:

A. Use of Foods:

USDA Foods may be utilized in the preparation and sale of foods for any function. Products may be utilized for banquets and conferences other than school lunch. Funds derived from the sale of these commodities must accrue to the nonprofit school food service account to operate or improve the nonprofit school food service program.

B. Quantities Requested:

Commodities are to be requested in such quantities as can be fully utilized without waste.

C. Allocations:

All foods shall be allocated by the Second Party to schools in their system based on the average number of reimbursable lunches served that meet the meal type requirements prescribed in the regulations for the National School Lunch Program 7 CFR 210.10. Any exceptions to this policy shall be stated on the Notice of Delivery of Donated Foods to Schools (KY-FD-3) form.

D. Facilities:

Standards for Storage Facilities:

In accordance with 7 CFR 250.14(b) the Second Party shall provide facilities adequate in the opinion of the Department for the handling, storage and preparation of donated food that:

1. Are sanitary and free from rodent, bird, insect and other animal infestation;
2. Safeguard foods against theft, spoilage and other loss;
3. Maintain foods at the following temperatures:
 - a. Dry Storage 50° F to 70°F
 - b. Cooler Storage 34°F to 45°F
 - c. Frozen Storage 0°F to -10°F

It is recommended that temperatures of all cooler and freezer storage areas be checked and recorded daily, including holidays and weekends.

4. Donated food is to be stored off the floor in a manner to allow for adequate ventilation. The Second Party shall take any other protective measures as may be necessary and ensure that storage facilities have obtained all required Federal, State and/or local health inspection and/or approval and that such inspection/approvals are current.

E. Re-donation:

Once the Second Party receives verification through the Electronic Commodity Ordering System (ECOS), that Group A Food have been placed, if the Second Party makes that determination that the amount requested/allocated cannot be used without waste, the Department must be informed immediately. The Department will transfer the food to another agency, if possible, and the Second Party will not have transfer charges placed against them. When verification is received through ECOS that Group B foods have been allocated, the Second Party determines that the food cannot be used due to excessive inventory, the Department must be notified immediately. The Department will make every effort to transfer the food to another agency; however, the Second party will be responsible for all delivery or transfer charges.

In instances in which the President or the Governor has declared a major disaster, emergency, or situation of distress, relief organizations may be eligible to receive donated foods for congregate meals service.

The Second Party agrees to release any and/or all commodities to the Department, if requested for such emergencies.

F. Improper Use, Loss or Damage of USDA foods:

Donated foods that are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State, or local health officials or by other inspection services shall be disposed of in one of the following manners:

1. Destroy carton labels and remove product from USDA packaging.
2. Destroy food and ensure that it cannot be eaten. For example: remove it from the USDA container and pour bleach or other substance on the product.
3. Some products may have to be taken to a landfill for proper disposal.
4. Agencies that are bleach-free should consider destroying product through a disposal unit or landfill.
5. When in doubt about proper disposal, contact your local health department or the Kentucky Department of Agriculture (KDA).

G. Availability for Demonstration and Test:

Upon approval of the Department, any food provided for use to the Second Party may be transferred to a Bona Fide experimental or testing agency, or used in workshops for demonstration or tests relating to the utilization of USDA Donated Food or used by the Second Party for the purpose of teaching students in Home Economics courses.

H. Processing:

If the end products are to be delivered to the Second Party via the contracted commercial distributor, the following criteria must be met:

1. The Second Party shall request no more than three (3) items be returned to commercial contracted distributor warehouse at any one time, unless agreed upon by the processor and the distributor.
2. Within 48 hours of receipt of notification from the Processor of the date of arrival of end products at the distributor's warehouse, the Second Party shall electronically submit a Notice of Delivery of USDA Foods (KY-FD- 3) form to the distributor
3. The Second Party shall take delivery of all processed items within 30 days of delivery at distributor's warehouse, or the contracted storage charge may be assessed.

I. Buy American:

When purchasing food products with Federal funds, the Second Party shall, whenever possible, purchase only food products that are produced in the United States as defined in 7 CFR 250.23.

J. Records:

The Second Party shall be responsible for the completion or maintenance of the following records:

1. Notice of Delivery (KY-FD-3) form on Commodity Foods.
2. All signed invoices showing the receipt of commodity foods.
3. Temperature Recording Chart (KY-FD-8) form for dry, frozen and cool storage areas.

4. A current Health Inspection Report by the local Health Department of all storage facilities and food preparation areas.
5. A record of and an accurate accounting of all funds derived from the sale of containers.
6. An approved Agreement of donated Foods (KY-FD-12-S), between the Department and the Second Party, with a record of all food preparation sites and participation data, Supplement to Agreement (KY-FD-12-B) a Designated Personnel for Food Alert/Emergency Feeding (KY-FD-22) form, with updates as needed; and a Certification Regarding Lobbying (KY-FD-16) form (if the Second party receives more than \$100,000 in donated foods). The approved Agreement with amendments must be kept on file in the Food Service office.
7. Records of extermination treatment performed by the Second Party or a contracted agency to prevent insect, rodent or other animal infestation. If self applied, a copy of current certification must be kept on file.
8. A record of all USDA foods used or transferred during a declared emergency for a mass feeding operation, using Emergency Mass Feeding Report (KY-FD-50) form.
9. Other records are to be completed and submitted relative to the distribution operations in such form as may be required by the Department.

K. Delivery and Receipt of USDA Foods:

The Second Party shall be responsible for the receipt of commodity foods from authorized distributors in accordance with the following requirements:

1. Delivery Schedule:

The Second Party will notify the Distributor of the amount(s) and date(s) of delivery of donated foods via the Notice of Delivery of Donated Food to Schools (KY-FD-3) electronic form within 24 hours notification by ECOS. The Second Party shall order a minimum of three (3) cases per item, per drop (except where less is allocated). However, less than three (3) cases per item may be ordered if the total number of donated cases per delivery drop is a least ten (15) cases. **There shall be a minimum of fifteen (15) cases per delivery (drop). In the event that the Second Party request delivery of less than 15 cases per drop the Distributor may charge the cost of a 15 case delivery (drop).**

The Second Party must complete the electronic KY-FD-3 form and send it by email to the contracted distributor. Second Parties having only one delivery drop, who do not email the electronic Notice of Delivery of Donated Food to Schools (KY-FD-3) form within the 24 hour timeframe, may receive each delivery order of commodities in full on their next scheduled delivery day, or within ten working days after receipt of the commodities by the distributor. Under no circumstances shall a Distributor deliver donated foods to a Second Party having more than one delivery drop without prior receipt of an electronic Notice of Delivery of Donated Food to Schools (KY-FD-3) form. Any foods delivered by a distributor to a multi-drop Second Party without receipt of an electronic Notice of Delivery of Donated Food to Schools (KY-FD-3) form may be rejected at no cost to the Second Party.

Upon notification of fresh fruit/vegetable orders have been placed, the Second Party must **immediately** notify the Distributor, via the electronic Notice of Delivery of Donated Food to Schools (KY-FD-3) form, of their delivery request. The distributor is required to make delivery on the next scheduled delivery date upon receipt of the fresh fruit/vegetable.

2. Receiving Requirements:

The Second Party must provide a qualified person to receive foods between the hours of 6:30 a.m. and 3:30 p.m. unless special arrangements are made in advance with the distributor. Deliveries shall be made Monday through Friday, except school holidays or snow closings days. In districts where there is no one on duty in the school district, the Second Party will notify the distributor by 6:00 a.m. on the morning schools are closed. A Second Party official must ensure a qualified person will be on duty the days when donated foods are scheduled for delivery after the cafeteria has closed (but prior to 3:30 p.m.). Deliveries past 3:30 p.m. must be scheduled in advance by the distributor with the school food authority only in emergency situations. Delivery schedules once established may not be changed unless a qualified emergency exists, and a new schedule can be negotiated with the distributor.

The Second Party shall require the designated official to verify, upon receipt, the accuracy of items, quantities of each item and condition of merchandise. Each delivery ticket must be signed by the designated Second Party official. Variations from the norm, i.e., shortages, damages, etc. must be noted on each delivery ticket by the designated official and initialed by both the truck driver of the distributor and the Second Party official.

The Second Party agrees to accept only amounts ordered via the electronic Notice of Delivery of Donated Food to Schools (KY-FD-3) form. If the Second Party accepts and uses any food that was not allocated to them, the Second Party must reimburse the distributor the dollar value of the foods used. Any cost incurred by the distributor to redistribute any unallocated foods accepted by the Second Party will be paid by the Second Party.

Shortages or overages identified upon receipt of foods from a distributor are to be reported to the distributor immediately and appropriate action taken to resolve the discrepancy.

The Second Party may be assessed a storage charge for each case of food remaining in storage at the Distributor's warehouse beyond 60 days. This charge shall not exceed 25 percent of the stated charge per case for delivery.

The Second Party agrees to pay the delivery and storage fees to the Distributor in a timely manner. Late charges may be applied at the discretion of the Distributor. Failure to pay may cause the Second Party further delivery of commodity foods.

L. Delivery Drop Areas:

The Second Party will be responsible for designating staging areas at each delivery site. Recognized areas are inside: dry storage area, or the door of a walk-in freezer or cooler. Drivers or helpers shall not be required to store merchandise on shelves nor stack in reach-in coolers, freezers or other cabinets, but are required to deliver merchandise to staging areas.

M. Special Deliveries:

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

The Second Party may request, within 10 days of the arrival of foods at the Distributor's warehouse, a lump sum delivery to a school-operated facility. Distributor shall state a charge to be assessed to the Second Party.

The Second Party may request and pay for more frequent deliveries if the Distributor is able and willing to provide the service.

N. Backhaul:

The Second Party may authorize processors to pick-up allocations from the distributor. The distributor may charge the Second Party up to 90 percent of bid price per case for pick-up.

O. Commodity Complaints:

To file a complaint about a particular USDA product, complete the electronic Food Complaint (KY-FD-21) form and email it to the Department. The Department will enter the information in the ECO System and forward to USDA.

To process a Second Party complaint more quickly, the Second Party should provide the following information:

- A description of the problem
- Date the product was received
- Location of the product
- How much product is involved
- Contract number (may be stenciled on the outer carton)
- Delivery order number (D/O) Available on the Electronic Commodity Ordering System (ECOS) or on the delivery invoice.

When the Second Party has a complaint about a product that is received in a commercial label, the Second Party has the option of contacting the company directly to request a resolution to the Second Party's problem. This may be the easiest option for the Second Party, if the Second Party has purchased other foods from this company and already has a relationship established with the company.

If the Second Party is seeking a replacement, the Second Party should keep the product separated from other products until the Second Party has been notified what to do with the damaged or unsuitable product.

P. Second Party Training Requirements:

The Second Party will provide and/or secure appropriate orientation and in-service training for staff responsible for the services delivered under this contract.

Q. Deficiencies and Corrective Measures:

The Second Party agrees that all corrective measures identified by the Department will be taken within the specified timeframe. The Department retains the right to withhold

delivery or allocation of USDA foods if the Second Party fails to take all corrective measures identified by the Department within the timeframe specified.

R. Second Party Review Requirements:

By February 1 of each year the Second Party must complete an annual review of each local food preparation and storage facility using the Food Distribution Compliance Review (KY-FD-54) form. The findings of each review must be presented verbally and in writing with the cafeteria manager and the site principal. The corrective action must be taken immediately on all deficiencies identified in the written review and corrective action documented and a copy must be kept on file in the central office for inspection by the Food Distribution Field Review staff.

S. Audit Exceptions:

Any Second Party, who received \$500,000 or more in total Federal awards/expenditures shall have a single audit conducted for that year in accordance with OMB Circular Number A-133, pursuant to the Single Audit Act of 1984, P.L. 98-502; and must submit a copy of the audit report, separately identifying CFDA 10.550, to the Division of Food Distribution.

The Second Party agrees to assume responsibility for any and all audit exceptions resulting from the Second Party's failure to comply with the terms of this Agreement or Federal Laws and Regulations governing this program.

3. RIGHTS OF INSPECTION AND AUDIT:

The United States Department of Agriculture, the Kentucky Department of Agriculture, or any of their duly authorized representatives shall have unrestricted access to inspect donated foods in storage or the facilities used in handling or storage of such donated foods, to inspect and audit all records including financial records and reports pertaining to the use of donated foods, and to review or audit the procedures and methods used in carrying out the requirements of this Agreement at any reasonable time.

4. SANCTIONS AND TERMINATION OR CANCELLATION:

Either the Department or the Second Party may terminate this agreement for cause by giving thirty (30) days notice in writing to the other party by certified or registered mail with return receipt requested, except that the Department may cancel this Agreement immediately upon receipt of evidence that any terms or conditions herein have been violated and except that any termination of Agreement for non-compliance with Title VI of the Civil Rights Act of 1964 shall be in accordance with applicable laws and regulations. Subject to such notice of termination or cancellation of this Agreement, the Second Party agrees to comply with the instructions of the Department.

5. CIVIL RIGHTS COMPLIANCE:

The Second Party hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), The Civil Rights Act of 1991, Title IX of the Education Amendments of 1972, (P.L. 92-318), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), Age Discrimination Act of 1975 (P.L. 94-135), The Americans with Disabilities Act of 1990, and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 and 50), and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground(s) of race, color, national origin, age, sex, age, disability, political beliefs, and marital or familial status be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the program applicant receives federal financial

assistance from the Department; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all federal financial assistance, grants or donation of federal property and interests in property, the detail of federal personnel, the sale and lease of, and the permission to use, federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, or any improvements made with federal financial assistance extended to the program applicant by the Department. This includes any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance such as food, and cash assistance for purchased or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the Second Party agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of Title VI and permit authorized USDA personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with Title VI. If there are any violations of this assurance, the U.S. Department of Agriculture, Food and Nutrition Service, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the distributing agency or, where applicable, Second Party, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The person or persons whose signatures appear on this agreement are authorized to sign this assurance on the behalf of the program applicant.

6. **DISCRIMINATION (BECAUSE OF RACE OR COLOR, NATIONAL ORIGIN, SEX, AGE OR DISABILITY) PROHIBITED:**

During the performance of this contract, the Second Party agrees as follows:

- A. The Second Party will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, age (40-70), or disability (as defined in the American Disabilities Act of 1990). The Second Party will take affirmative action to ensure that applicants are employed and that employees are treated during Employment without regard to their race, religion, color, national origin, sex, or age (40-70). Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Second Party agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Second Party will, in all solicitations or advertisements for employees placed by or on behalf of the Second Party; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex or age (40-70).
- C. The Second Party will send to each labor union or representative of workers, with which the Second Party has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

- D. The Second Party will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- E. The Second Party will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to the Second Party's books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Second Party's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the Second Party may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Second Party will include the provisions of paragraphs 1 through 7 of Section 202 of Executive Order No. 11246 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Second Party will take such action with respect to any subcontractor or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a subcontractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the agency, the Second Party may request the United States to enter into such litigation to protect the interests of the United States.
- H. The Second Party agrees to comply with all applicable federal and state laws and regulations pertaining to the recognition and protection of the civil rights of persons to whom services are rendered and to applicants for such services during the performance of this contract.

7. DISCRIMINATION (BECAUSE OF HANDICAP/DISABILITY) PROHIBITED:

The Second Party agrees to comply with the provisions of P.L. 93-112 Section 504, of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified handicapped individuals under any program or activity receiving federal financial assistance.

8. LICENSING REQUIREMENTS:

The Second Party shall comply with all state and federal licensing requirements and standards for all contract services and advise the Department when such compliance is not met.

9. FULFILLMENT OF CONTRACT:

The Second Party is responsible for fulfillment of the terms of this contract with the Department, whether or not subcontractors are used, and the terms of this contract are binding upon all subcontractors.

Whenever any provision of this agreement requires approval of or by, or notice to, the Kentucky Department of Agriculture or the Kentucky Department of Agriculture's Division of Food

Distribution, said notice or request for approval shall be in writing with written approval signed by an authorized representative of the Kentucky Department of Agriculture.

10. DISCLAIMER:

The Second Party agrees to hold the Department harmless from any and all losses, claims, expenses, causes of action, costs, damages, and obligations, final or otherwise, arising from any and all acts of the Second Party, its agents, subcontractors, employees, licensees, participants hereunder, or invitees that result in injury to persons, damage to property, or loss arising from performance of this contract as those injuries, damages, or losses relate to any person, corporation, partnership, or any other entity. Furthermore, the Second Party agrees to indemnify the Department for any and all cost, direct or indirect, including legal defense that shall arise in relation to performance of this contract.

11. FINANCIAL MANAGEMENT

The Second Party agrees to establish and/or maintain a financial system, which shall establish that:

- A. Funds accruing from the sale of containers or packing materials in which donated foods are received, salvage of donated foods shall be returned to the Department or used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage, and handling of donated foods, salaries of persons directly connected with the program, and other program related expenses.
- B. The Second Party will pay all in-state distribution charges as established by the Department. The charges shall be paid monthly, in accordance with established Department policy, at the approved rate charged by the Distributor in the bid proposal award. The Department retains the right to withhold delivery or allocation of USDA foods if the Second Party fails to comply with the terms of this contract or if the Second Party falls more than sixty days in arrears in payment.
- C. Funds accruing from the operation of the program shall not be used for those costs which are not allowable under the cost principles in the U.S. Department of Agriculture Uniform Federal Assistance Regulations, 7 CFR Part 3015 Subpart T.
- D. The parties to this Agreement are cognizant that the Department of Agriculture is not liable for Social Security contributions pursuant to 420S Code, relative to the compensation of the Second Party during the period of this Agreement.

12. LOBBYING RESTRICTIONS, CERTIFICATION AND DISCLOSURE:

In accordance with 7 CFR 3018, no appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement, including agreements covering donated commodities, with a dollar value exceeding \$100,000, to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal Actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

A. Exceptions:

The prohibition on using appropriated funds does not apply to activities by employees of the Second Party with respect to:

Liaison activities with Federal agencies and Congress not directly related to a covered Federal action.

Providing any information specifically requested by an agency or Congress.

Discussion and/or demonstration of products or services if not related to a specific solicitation for a covered action.

Professional and technical services in preparing, submitting or negotiating any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement or for meeting legal requirements conditional to receipt of any Federal contract, grant, loan or cooperative agreement. (The prohibition also does not apply to such services provided by others for the same purposes.)

B. Certification:

In addition to the above prohibition against using appropriated funds for lobbying for specific awards, Section 1352, Title 31, U. S. Code, requires each recipient of a Federal contract, grant, loan or cooperative agreement, including recipients of USDA Commodities, in excess of \$100,000 in Federal funds to sign a Certification Regarding Lobbying, stating that no payment has been made or will be made for the above described activities. The signed certification statement must be returned with this agreement.

C. Disclosure:

If non-federal funds are used by the Second Party to pay persons external to the Second Party's organization for activities which would have been prohibited if federal funds had been used, a Disclosure Form to Report Lobbying, Federal Form LLL, must be completed by the Second Party and submitted to the Department. The Second Party shall amend the Disclosure Form LLL at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Second Party. If the cost paid, or to be paid, to attempt to influence a particular federal transaction increased by more than \$25,000 from what was reported in the initial disclosure statement, a new report is required at the end of the quarter in which the action occurred.

D. Penalties:

Use of appropriated funds for lobbying activities shall subject the Second Party to a Civil Penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. Failure to file or amend a disclosure report shall subject the Second Party to the same penalty for each such failure.

13. FOOD SERVICE MANAGEMENT COMPANIES

The Second Party may employ Food Service Management Companies to conduct food service operations in accordance with 7CFR 250.12 (d) and shall enter into a written contract with the Food Service Management Company which shall expressly provide that:

- A. Any donated foods received by the Second Party and made available to the Food Service Management Company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation and the Second Party shall demonstrate that the full value of all donated foods is used solely for the benefit of the Second Party.

- B. The books and records of the Food Service Management Company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.
- C. All Food Service Management contracts shall be in effect for no longer than one year and shall provide that it may be extended at the option of both parties for four (4) additional one year periods and be subject to review by the Department for compliance with the requirements of 7 CFR 250.12 (c). The review procedures will encompass eligibility, food ordering procedures, storage practices, inventory controls, reporting and record keeping requirements, and compliance with nondiscrimination provisions.
- D. The Food Service Management Contract must contain lobbying restrictions outlined in Item 11 of this Agreement.
- E. Contracts may be terminated for cause by either party upon 30 days' written notice. At the time the contract is extended, the Food Service Management Agency must update all pertinent information and must demonstrate that all donated foods received during the previous contract period have been accounted for.
- F. When contracting for storage facilities, the Food Service Management Agency shall enter into a written contract for lease of storage facilities to be effective for no longer than one year. The contract may be extended at the option of both parties for four additional one-year periods. At the time the contract is extended, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for.
- G. **A copy of the Food Service Management Company contract must be forwarded to this office for review, prior to the effective date of the contract.**

14. DEPARTMENT OF DEFENSE (DOD) PROGRAM:

Any Second Party participating in the USDA Food and Consumer Service Fresh Fruit and Vegetable Project administered by the Department shall ensure the following:

The Second Party is required to:

- 1. Ordering:
 - A. Place orders for fresh produce directly with the Defense Subsistence Office (DSO) using a DOD customized program "Tap-IT.
 - B. When ordering fresh produce, the Second Party shall include the five digit item code, quantity, requisition number and requested delivery date (consistent with established lead times).
 - C. When ordering fresh produce, the Second Party shall identify any unique ordering requirements (e.g., count, size or grade) for DSO to ensure that accurate quality and quantity of fresh product are purchased.
 - D. Delivery period will be Sept. 1st - June 30th each year.
- 2. Shipment and Delivery:
 - A. When the fresh product is shipped, the Second Party shall be responsible for off loading the fresh product from the tailgate in an expeditious manner; if the

Second Party is delinquent in off loading and detention charges accrue, the Second Party will be responsible for the detention and other charges caused by the delay.

- B. Unless otherwise directed by DSO, the Second Party shall exchange any pallets received from prior shipments or from pallets on hand.
 - C. The Second Party shall notify DSO if the shipment has not arrived within one hour of the scheduled delivery time and take any corrective action requested by DSO.
 - D. Prior to accepting any shipment, the Second Party shall count and verify the shipment and annotate any overages or shortages on the vendor's ticket or government bill of lading.
 - E. Prior to accepting any shipment, the Second Party shall inspect the fresh product and call the DSO if there is any nonconformance, such as product quality or product damaged during shipment, to determine disposition of the product. DSO shall evaluate any nonconforming fresh product, utilizing field buyers, DSO Produce Specialists or Food and Consumer Services (FCS) or Agricultural Marketing Service (AMS) representatives, and advise the Second Party as to whether to accept or reject the product and what actions to take if the fresh produce that has been accepted is later determined to be nonconforming.
 - F. Acceptance of a shipment shall be made by signing the delivery ticket or government bill of lading.
 - G. The Second Party shall transmit the vendor's delivery ticket to DSO by mail or facsimile on a weekly basis.
 - H. Within 24 hours of delivery, the Second Party shall notify DSO of any quality or condition defect of the fresh product discovered after acceptance of the fresh product.
3. The DSO shall purchase and arrange delivery of the fresh product to the Second Party and shall perform the following:
- A. In consultation with the Second Party, establish a regular ordering schedule and the necessary lead times for orders, taking into account the needs of the Second Party. If requested by the Second Party, the ordering schedule shall permit orders as frequently as daily if economically feasible, provided that orders for volume buys must be placed at least ten (10) days before the requested delivery date.
 - B. Not later than the 25th day of each month, provide the Second Party with DPSC Form 1931 listing the fresh products expected to be available for the subsequent month and the item codes for each of these fresh products.
 - C. Provide the Second Party with a monthly news flash containing any new or updated information on fresh product availability, fresh product and market conditions, best buys, expected price fluctuations, new items, and any other market information of interest.
 - D. Verify orders placed through the "Tap-It" system.

- E. If DSO does not receive an order from a Second Party in accordance with the established ordering schedule contact the Second Party to determine if orders will be made.
- F. At the time of ordering, notify the Second Party of any fresh product available at an economic price due to market conditions of which the Second Party was not previously notified.
- G. Make any item not available when ordered, available to be ordered by the Second Party as soon as it becomes available.
- H. In cases of emergency, fill orders from stock on hand or arrange delivery directly from a vendor to a Second Party, and;
- I. Before filling any order, check to ensure that the order will not cause the dollar allocation for the Second Party to be exceeded.

15. DEPARTMENT RESPONSIBILITIES:

In order to ensure compliance by the Second Party with the requirements of this Agreement, the Department agrees to perform the following functions:

A. INFORMATION DISSEMINATION:

The Department will provide the Second Party with all information needed for informed participation in the program relative to: State and Federal Regulations; procedures for ordering and handling commodities; results of test evaluations and surveys; and any other available pertinent information as requested or needed by the Second Party. This type of information will be placed on the Division web site.

B. TRAINING

The Department Field Review Staff will train food service personnel on an annual or as needed basis, depending on changes in policies and procedures.

C. REVIEWS

An on-site review of each recipient agency central office shall be conducted by the Department at least once every year. These reviews will include, but are not limited to, commodity ordering procedures, pro-rata share allocating, storage and warehousing practices and compliance with reporting and record keeping requirements.

Any discrepancy discovered by a Department Field Reviewer during a review that does require a follow-up review will be specified in writing in the Administrative Review Report, along with corrective measures to be taken and the prescribed time frame. Each discrepancy will be discussed with appropriate Second Party staff and a copy of the Administrative Review Report will be mailed to the appropriate Second Party official. Upon completion of the corrective measures by the appropriate food service official, written verification, in the same format as the Administrative Review Report explaining in detail the corrective measures taken and the date of completion must be returned to the Department on or before the date indicated.

The Food Service Management contract implemented by the Second Party shall be subject to review by the Department for compliance with requirements of this contract.

16. PURCHASING AND SPECIFICATIONS:

The agent of the Second Party certifies by his/her signature hereinafter that he/she will not attempt in any manner to influence any specifications, to be restrictive in any way or respect, nor will he/she attempt in any way to influence any purchasing of services or commodities by the Commonwealth of Kentucky. For the purpose of this agreement, "he/she" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

17. CONFLICT-OF-INTEREST LAWS AND PRINCIPLES:

The agent of the Second Party hereby also certifies by his/her signature hereinafter that he/she is legally entitled to enter into the subject contract with the Commonwealth of Kentucky and certifies that he/she is not and will not be violating either directly or indirectly any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390, 210.110, 210.990 (1), or any other applicable statute) or principle by the performance of this contract.

18. CHOICE OF LAW AND FORUM PROVISION:

All questions as to the execution, validity, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action, which is brought on the basis of this Agreement, shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

SECOND PARTY: (School District)

DEPARTMENT OF AGRICULTURE
Division of Food Distribution
107 Corporate Drive
Frankfort, KY 40601

Name of Second Party

Address

City State Zip Code

Email Address

Superintendent (Type or Print)

Signature of Superintendent/Administrator

Date

Director
Division of Food Distribution

Date

Approved as to Form and Legality:

GENERAL COUNSEL

Date