

**STANDARD AGREEMENT TO PROVIDE FOOD SERVICE
BETWEEN A SPONSOR AND A FOOD SERVICE VENDOR**

This agreement ("Agreement") is entered into on **<insert date>** by and between **<insert name of sponsor and CTD#>** ("Sponsor") and **<insert name of Food Service Provider>** ("Vendor") for school breakfast and/or lunches. Total contract amount: **< estimated value of this agreement for the term of the contract.>**

BACKGROUND

Whereas, it is not within the capability of the Sponsor to prepare specified meals under the **Summer Food Service Program (SFSP)**

Whereas, the facilities and capabilities of the Vendor are adequate to prepare and deliver specified meals to the Sponsor's facility (ies); and Whereas, the Vendor is willing to provide such services to the Sponsor on a Fixed-fee contract reimbursement basis.

Therefore, both parties agree as follows:

AGREEMENT

1. Vendor Responsibilities

- 1.1. **Food Services:** The Vendor agrees to prepare specified meals for delivery **<insert inclusive or insert exclusive>** of milk or juice to the site specified in Paragraph 1.2 per the agreed upon menu planning option specified in Paragraph 1.6. The Sponsor has approved the menu, which is incorporated into this Agreement by this reference.
- 1.2. **Service Site(s):** For the purpose of this Agreement, the Vendor shall make and deliver meals that comply with the **SFSP <delete the programs that are NOT part of this contract>** and this Agreement to the food service site at the following location(s): **<insert the Sponsor site(s) address(es)>**
- 1.3. **Delivery Requirements:** The Vendor shall make deliveries of the meals within the hours and on the days designated below. The Vendor shall make deliveries only to the authorized Site(s) at the following day(s) and time(s): **<insert the day(s) and/or insert time(s)> that the vendor will make the deliveries>**
- 1.4. **Price:** Vendor's price for each SFSP break fast meal is \$**<insert price(s) here>**,
For each SFSP lunch meal is \$**<insert price(s) here>**,
For each SFSP snack meal is \$ **<insert price(s) here>**,

And for each SFSP Supper meal is \$ **<insert price(s) here>**,

<delete the meals that are NOT
the written estimate of meals needed that the Sponsor
Paragraph 1.9. The Price shall be firm for the term of the

part of this contract> based on
provides, except as provided in
contract.

- 1.5. **Menu Preparation and Approval:** Vendor shall provide the Sponsor, for approval, a proposed 21-days cycle menu for the operational period, at least **<insert number>**

business days prior to the beginning of the period to which the menu applies. Any changes to the menu made after Sponsor approval must be agreed upon by the Sponsor and documented on the menu records. Menu items may be adjusted in writing by the mutual consent of both parties. However, the Vendor shall adjust the menus at the request of the Sponsor whenever the Sponsor determines certain items to be unacceptable. Such items can be determined to be unacceptable because of (1) a monotonous diet resulting from items served frequently or the similarity to other items; (2) the nutritional needs of the children; (3) susceptibility to spoilage; and (4) excessive waste resulting from unpopularity of items with children. Such adjustments shall be made at the earliest convenience of both parties, but in no instance later than one week after request except that in the case of spoilage adjustment shall be made in such a manner that the children in attendance on the day spoilage is discovered shall receive acceptable meals meeting meal requirements.

- 1.6. Food Preparation: All meals prepared by the FSMC shall be unitized with or without milk or juice. Vendor shall assure that each meal provided to the Sponsor under this Agreement meets the minimum requirements for reimbursable meals that meet the Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The Vendor must follow the single Food-Based Menu Planning (FBMP) meal patterns as described in 7 CFR § §225.16..
- 1.7. Recordkeeping: Vendor shall maintain full and accurate records/production worksheets that document: (1) the menus provided to the Sponsor during the term of this Agreement, (2) a listing of all components of each meal, and (3) an itemization of the quantities and portion sizes of each component used to prepare each meal. The Vendor agrees to provide lunch preparation documentation by using yield factors for each food item as listed in the United States Department of Agriculture (“USDA”) Food Buying Guide when calculating and recording the quantity of food prepared for each meal. Vendor shall also maintain and make available:
 - 1.7.1. Recipes, Nutrition Facts labels, and any necessary Child Nutrition (CN) labels or product specification sheets related to the menus served;
 - 1.7.2. Such cost records as invoices, receipts or other documentation that exhibit the purchase, or otherwise availability to the Vendor, of the meal components and quantities itemized in the meal production records;
 - 1.7.3. On a daily basis, an accurate count of the number of meals, by meal type, prepared for and delivered to the Sponsor. Meal count documentation must include the number of meals requested by the Sponsor in writing.
- 1.8. Estimates: Vendor shall allow the Sponsor to increase or decrease the number of meal orders, as needed, when the request is made within <insert number> hours of the scheduled delivery time.
- 1.9. Invoicing: Vendor shall present to the Sponsor an invoice accompanied by reports no later than the <insert number> day of each month which itemizes the previous month's delivery. The Vendor agrees to forfeit payment for meals which are not ready within

one (1) hour of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in this Agreement. In cases of nonperformance or noncompliance on the part of the Vendor, the Vendor shall pay the Sponsor for any excess costs the Sponsor incurs by obtaining meals from another source.

1.10. Certifications: Vendor shall provide the Sponsor with a copy of current health certifications for the food service facility in which it prepares meals for **SFSP**. The Vendor also agrees to notify the Sponsor of the results of any health inspection that is made during the duration of this Agreement. The Vendor shall maintain proper sanitation practices and health standards in conformance with all applicable State and local laws and regulations. The Vendor shall assure that wholesome ingredients are used and that all food is properly stored, prepared, packaged, and transported. In addition, any substance that the food contacts or which is used in conjunction with the food shall be so handled as to assure that it does not become contaminated.

1.11. Record Retention: Vendor shall retain all records related to this Agreement in its possession for five (5) years after the expiration of the Agreement. Upon request make all accounts and records pertaining to the Agreement available to the certified public accountant hired by the Sponsor, representatives of the Arizona Department of Education (ADE), USDA, the US General Accounting Office, and the USDA Office of Inspector General (“OIG”) for audits or administrative reviews at a reasonable time and place.

1.12. Subcontracting: Vendor shall not subcontract any portion of this Agreement.

1.13. Commodities: **<If you will not be using commodities, please delete this entire clause>** Vendor agrees to accept commodities from the Sponsor. These commodities will only be used in the preparation of meals provided for the **SFSP**. The Vendor can only obtain the commodities at the Sponsor site.

1.13.1 The Vendor must credit monthly for the value of all donated foods received for use in the school year (including both entitlement and bonus food), and including the market value of donated foods contained in processed end products. Credit issued by the Vendor to the Sponsor for USDA donated commodity foods received shall be recorded on the monthly bill/invoice as a separate line item and shall be clearly identified and labeled.

1.13.2 The Vendor must ensure that it has a perpetual inventory record maintained and submitted to the Sponsor on a monthly basis. Failure of the Vendor to maintain a perpetual inventory shall be considered as evidence of improper distribution or loss of USDA-donated food.

1.13.3 The Vendor shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA-donated foods. The Vendor shall credit

the Sponsor for the value of all USDA-donated foods received for the use in Sponsor's meal service in the school year, including both entitlement and bonus foods, and including the value of donated foods contained in processed end products.

- 1.14 Offer Free and Reduced Meals: Vendor will not offer a la carte food service unless free, reduced price and full price reimbursable meals are offered to all eligible children.
- 1.15 Buy American: Vendor will Buy American domestic commodities and products for school meals to the maximum extent practicable. Domestic products are those that are produced in the United States and those that are processed in the United States substantially (51 percent or more) using agricultural commodities produced in the United States.
- 1.16 Energy Policy and Conservation Act: Vendor shall meet the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. (Pub. L. 94-163, 89 Stat. 871.3016.36)(i)(13)
- 1.17 HACCP: Vendor will provide the Sponsor, upon request, evidence of daily worksheets that detail Hazard Analysis and Critical Control Point (HACCP) compliance from receipt to delivery of the finished product.
- 1.18 “Permit To Operate” Health Certification: Vendor shall have State or local “Permit to Operate” health certification for any facility outside the school in which it prepares meals. The Vendor shall maintain the “Permit To Operate” health certification for the duration of the contract.
- 1.19 Food Safety: The FSMC must have State or local health certification for the facility in which it proposes to prepare meals for use in the Simplified Summer Food Program. The FSMC must ensure that health and sanitation requirements are met at all times. In addition, the FSMC must ensure that meals are inspected periodically to determine bacteria levels present in the meals and that the bacteria levels found to be present in the meals conform with the standards set by local health authorities. The results of the inspections must be submitted promptly to the SFA and ADE.
- 1.20 Meal Delivery: The Vendor meal delivery vehicle must be adequately constructed so as to protect the food, foodservice equipment, and utensils from contamination at all times during transportation. The delivery vehicle interior surfaces must be clean at all times during transportation of meals.
 - 1.20.1 During the transportation of meals, hot foods that are potentially hazardous must be kept at a minimum temperature of 135 degrees F at all times.
 - 1.20.2 During the transportation of meals, cold foods that are potentially hazardous must be kept at or below 41 degrees F at all times and be transported in containers capable of maintaining temperatures at or below 41 degrees F.

1.20.3 Vendor must monitor and document temperatures of menu items prior to transport, upon arrival, and at the time of serving. A temperature log for each menu item served must be completed daily and maintained. The Vendor temperature log must be made available to the Sponsor once requested.

2. Sponsor Responsibilities

- 2.1. Retain Control of Food Service Program: Sponsor will retain control of the quality, extent, and general nature of the food service, including counting and claiming meals, and ordering and accounting for USDA commodities.
- 2.2. Food Service Operation Conformance: Sponsor will ensure that the food service operation is in conformance with the School's Agreement with the ADE to participate in Child Nutrition Programs.
- 2.3. Financial Responsibility: Sponsor will retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation.
- 2.4. Signature Authority: Sponsor will retain signature authority on the Child Nutrition Programs agreement. Retain signature authority for the annual Child Nutrition Programs application and by electronically submitting required information to the ADE.
- 2.5. Price Control: Sponsor will retain control of the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.
- 2.6. Management: In accordance with 7 CFR 225.15(a)(3) the sponsor will be responsible for meal ordering; assuming official record keeping responsibilities, including meal count information to substantiate claims; submitting claims; training and monitoring administrative and site staff; announcing availability of meals to the news media; and determining income eligibility and maintaining individual income eligibility statements.
- 2.7. Contract Document: Sponsor will prepare all Vendor contract documents.
- 2.8. Program Monitoring: Sponsor will monitor all meals to ensure the food service is in conformance with program regulations.
- 2.9. Unacceptable Meal: Sponsor shall be responsible for informing the Vendor of its reasons for determining that a meal is unacceptable in writing within forty-eight (48) hours of when the meal is delivered to the site.
- 2.10. Meal Estimates: Sponsor shall provide in writing, no later than **<insert date and time>** before the first day of operation, a reasonably accurate estimate of the number of meals to be delivered to Sponsor each day. The Sponsor shall notify the Vendor in writing of necessary increases or decreases in the number of meal orders within **<insert**

number> hours of the scheduled delivery time. Errors in meal order counts made by the Sponsor shall be the sole responsibility of the Sponsor.

- 2.11. Sponsor Representative Duties: Sponsor shall ensure that a Sponsor representative is available at each delivery site, at the specified time on each specified delivery day to receive, inspect, and sign for the requested number of meals. This individual will verify the temperature, quality, and quantity of each meal delivery. The Sponsor assures the Vendor that this individual will be trained and knowledgeable in the record keeping and meal requirements of the **SFSP** and with local health and safety codes.
- 2.12. Cleaning: Sponsor shall be responsible for cleaning the eating areas daily.
- 2.13. Approval of Menus: Sponsor shall notify the Vendor in writing within **<insert number>** days of receipt of the next month's proposed cycle menu, of any changes, additions or deletions.
- 2.14. SFSP Compliance: Sponsor shall assure that the Vendor has a copy of 7 CFR 255.16, the Meal Planning Option that is to be followed and all other technical assistance materials pertaining to the food service requirements of the **SFSP**
The Sponsor will, within 24 _____ hours of receipt from the ADE/Health & Nutrition, advise the Vendor of any changes in _____ the food service requirements.
- 2.15. Payment: Sponsor shall pay the Vendor by the **<insert number>** day of each month the full amount as presented on the monthly itemized invoice. The Sponsor shall notify the Vendor within 48 hours of receipt of any discrepancy in the invoice. The Sponsor shall pay the Vendor for all meals delivered in accordance with the agreement. Neither ADE nor USDA will assume any liability for payment of the difference between the number of meals prepared and delivered by the Vendor and the number of meals served by the Sponsor that are eligible for reimbursement. In addition, neither ADE nor USDA will be responsible for resolving issues of partial or non-payment per the terms of this agreement.

- 3.1. Employment: Vendor shall comply with all applicable Federal, State, and local laws and regulations pertaining to wages, hours, conditions of employment, and nondiscrimination in employment, 7 CFR Section 3016.36 (i)(3). USDA is an Equal Opportunity Provider and Employer.
- 3.2. Payroll Taxes and Costs: Vendor shall pay its employees directly and shall withhold and pay all applicable federal and state employment taxes and payroll insurance with respect to its employees, including an applicable income, social security, Medicare and employment taxes, and workers compensation costs.
- 3.3. Indemnity:

- 3.3.1. Vendor shall indemnify, defend and hold the Sponsor harmless against any loss of damage (including attorney's fees and costs of litigation) caused by the Vendor's negligent act or omission, theft by the Vendor's employees, or the negligent or intentional acts or omissions of the Vendor's agents or employees. The Vendor shall defend any suit against the Sponsor alleging personal injury or property damage arising out of the transportation of meals or other items to the Site(s) or out of the acts of the Vendor's employees, and any suit alleging bodily injury, sickness, or disease arising out of the consumption of the meals delivered by the Vendor to the Food Service Site(s), and shall be liable for any damages agreed to by the parties or awarded as a result of such litigation.
- 3.3.2. Sponsor shall promptly notify the Vendor in writing of any claims against the Vendor or the Sponsor and, in the event a suit is filed, shall promptly forward to the Vendor all papers in connection therewith. The Vendor shall not incur any expense or make any settlement without the Sponsor's consent. However, if the Vendor refuses or neglects to defend any such suit, the Sponsor may defend, adjust, or settle any such claim, and the costs of such defense, adjustment, or settlement, including reasonable attorney's fees, shall be charged to the Vendor.

3.4. Agreement Modification, Nonperformance or Default:

- 3.4.1. This Agreement constitutes the entire understanding between the Vendor and the Sponsor with respect to the subject matter hereof and there is no other written or oral understandings or agreements with respect hereto. No variation or modification of the Agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of the Sponsor and the Vendor. No assignment or transfer of this Agreement may be made, in whole or in part, without the prior written consent of the Sponsor.
- 3.4.2. The Sponsor may, upon written notice of default to the Vendor, terminate the whole or any part of this Agreement in any one of the following circumstances:
 - 3.4.2.1. If the Vendor fails to make delivery of meals, other agreed upon items (i.e. Eating utensils, supplies, storage equipment), or to perform the services within the time specified herein.
 - 3.4.2.2. If the Vendor fails to perform any of the other provisions of this Agreement in accordance with its terms and does not correct such failure within 48 hours after requested to do so.

3.5. Duration and Termination:

- 3.5.1. This Agreement shall become effective <insert date> after both parties sign it and ADE approves it. The Vendor shall provide meals during the period starting

on the Effective Date and ending on **<insert date>**. However, either party may, at any time during the life of this Agreement, terminate this Agreement by giving thirty (30) days notice in writing to the other party of its intention to do so. The Sponsor may terminate this Agreement upon written notice if Vendor fails to fully comply with the terms and conditions. All notices to the Sponsor shall be addressed to the Sponsor at the address listed on the signature page, and all notices to the Vendor shall be addressed to the Vendor at the address listed on the signature page.

- 3.6. Audit: Sponsor shall have the right, at its expense, to inspect the books and records of Vendor to verify its performance and expenses submitted under this Agreement. Inspection shall take place during normal business hours at Vendor's place of business.
- 3.7. Applicable Law: The law of the State of Arizona shall govern this Agreement.
- 3.8. Cancellation: The Sponsor may cancel this Agreement under Arizona Revised Statutes §38-511(Cancellation for conflict of interest - www.azleg.state.az.us/ars/38/00511.htm) for a violation of that statute. This notice complies with the requirements of that statute.
- 3.9. Termination without Cause: Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other of such party's intention to terminate this Agreement.
- 3.10. Unavailability of Funds: The Sponsor may terminate this Agreement, without penalty, if its Governing Board fails to appropriate funds in subsequent fiscal years to support the program that is the subject of this Agreement. The Sponsor shall give the Vendor prompt written notice after it knows that funding will not be available.
- 3.11. Non-Discrimination: Vendor shall not discriminate in either the provision of services, or in employment, against any person because of sex, race, disability, marital or family status, national origin, veteran's status, sexual preference, or religion. Vendor agrees to comply with all applicable federal and state laws, rules, regulations, and executive orders relating to non-discrimination, affirmative action and equal employment opportunity.
- 3.12. Workers Compensation: Vendor shall maintain a system of coverage for workers compensation in conformance with applicable state law covering all of its employees who may be employed in connection with food service provided to the Sponsor.
- 3.13. Insurance: During the term of this Agreement, the Vendor shall maintain insurance policies described below issued by companies licensed in Arizona with a current A.M. Best rating of A: VIII or better. The Vendor shall also name the Sponsor as additionally insured under the liability policy for the duration of the contract. And upon request, the Vendor will provide the Sponsor with a certificate evidencing such insurance coverage.

- 3.13.1. Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this Agreement; and
- 3.13.2. Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Vendor's owned, hired, and non-owned vehicles.
- 3.14 Assignment: This Agreement may not be assigned by either party without the prior written consent of the other party.
- 3.15 Construction and Effect: A waiver of any failure under this Agreement shall neither be construed as, nor constitute a waiver of, any subsequent failure. This Agreement supersedes all prior negotiations, representations, or Agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendixes referred to herein are made part of this Agreement by the respective references to them. This Agreement may be executed in several counterparts, each of which shall be deemed an original.
- 3.16 Amendments to the Agreement: The parties cannot alter any provision in this Agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this Agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the Agreement. The parties must mutually agree, in a written document signed by both parties and attached to this Agreement, amend, add, or delete an Article or Appendix. Any amendment to this Agreement shall become effective at the time specified in the amendment.

4.0 Vendor Certification Statements

- 4.1 Certificate of Independent Price Determination: Vendor admits that all prices in this Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Vendor or with any competitor certification regarding non-collusion.
- 4.2 Contract Work Hours and Safety Standard Act: The Vendor is required to follow the Contract Work Hours and Safety Standard Act. It requires the Vendor to pay employees overtime (one and one-half times their basic rate of pay) for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions. **<Delete entire clause if the contract is under \$2,500 >**
- 4.3 Debarment, Suspension, Ineligibly and Voluntary Exclusion: The Vendor shall sign and submit the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion from participating in Federal contracts/grants/awards. **<Delete entire clause if the contract is under \$25,000 >**

- 4.4 **Certification Regarding Lobbying:** The Vendor must submit and sign a certification regarding lobbying. The Vendor states that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative Agreement 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. **<Delete entire clause if the contract is under \$100,000 >**

- 4.5 **Clean Air Act:** The Vendor shall follow all applicable standards, orders, and requirements issued under Section 306 of the Clean Air Act which the United States Congress passed rules to curb pollution. Contractor shall report all violations to the grantor agency and to the USEPA Administrator for Enforcement (EN-329). **<Delete entire clause if the contract is under \$100,000 >**

- 4.6 **Conflict of Interest:** Vendor’s signature on this Agreement indicates there is no conflict of interest associated with the award of this Agreement. No one employed by the Sponsor is related to or has any other personal or professional relationship with the Vendor and/or his/her family.

For the Sponsor:

Name and Title of Representative

Signature

Mailing Address, Street/PO Box

Mailing Address, City, State, Zip Code

Telephone

For the Vendor:

Name and Title of Representative

Signature

Mailing Address, Street/PO Box

Mailing Address, City, State, Zip Code

Telephone

Email

Email

Date

Date