USDA Foods Agreement
Between Contracting Entity and Texas Department of Agriculture

The Texas Department of Agriculture (TDA) administers and operates Federal USDA Foods programs by agreement with the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS). The programs included in this Agreement are: food distribution programs governed by 7 Code of Federal Regulations (CFR) Part 250, including National School Lunch Program (7 CFR Part 210), Summer Food Service Program (7 CFR Part 225), and The Emergency Food Assistance Program (7 CFR Part 251).

An agency or organization that wishes to receive USDA Foods from TDA must submit this completed agreement ("Agreement") and all other documentation required by TDA.

Upon signing this Agreement, an applicant agency or organization (herein after referred to as the "Contracting Entity," "CE," "Contracting Entities," or "CEs") expressly agrees to comply with the following terms and conditions:

I. Agreement, Termination, and Payment

a. This Agreement specifies the rights and responsibilities of TDA and _____ (CE) (collectively, the Parties).

b. By signing this Agreement, the Parties are bound by its terms and conditions until its ending date, unless terminated earlier in accordance with this Agreement. This Agreement may be terminated under the following circumstances: (1) by TDA for failure of the CE to comply with this Agreement or applicable requirements, upon written notification; (2) by either party, upon written notification of the other party, at least 60 days prior to the effective date of termination, or (3) notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by TDA are at any time not available or are insufficient, through failure of any entity to appropriate funds or otherwise, then TDA will have the right to terminate this Agreement at no additional cost and with no penalty whatsoever by giving written notice that documents the lack of funding.

c. If Federal or State laws or other requirements are amended or judicially interpreted so that the continued fulfillment of this Agreement, on the part of either Party, is substantially unreasonable or impossible, or if the Parties are unable to agree upon any amendment that would therefore be needed to enable the substantial continuation of the services contemplated by this Agreement, then the Parties shall be discharged from any further obligations created under the terms of this Agreement, except for the equitable settlement of the respective accrued interest of obligations, including audit findings, incurred up to the date of termination.

d. TDA will, subject to Federal appropriation and availability to TDA of sufficient funds, provide program payment to the CE, if applicable, in accordance with the terms of this Agreement. No reimbursement shall be made for performance under this Agreement occurring prior to (a) the beginning effective date of this Agreement or (b) a later date established by TDA based on the date of receipt of a fully executed copy of this Agreement.

II. Terms

a. This Agreement shall take effect on _____, 20_____, (to be completed by TDA) or upon signature by both Parties, whichever is later, and shall end only when it is terminated by one or both Parties.

b. This Agreement may be amended at any time, if in writing and signed by the Parties.

III. Program Administration and Financial Management

a. CE will comply with the applicable regulations for its designated program, as well as 7 CFR Parts 250 and 251, as amended; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards (2 CFR, Part 200, as amended); and State policies and procedures as issued and amended by TDA.

b. CE will perform as described in its application (including supporting documents and any approved amendments to the application) for participation in the designated program.

IV. Contracting Entity Roles and Responsibilities Related to Receipt, Use, Storage, and Disposition of USDA Foods

Upon execution of this Agreement, CE shall:

a. Comply with all requirements for receiving, handling, distributing, transporting, storing, and/or using USDA Foods as provided in this Agreement; TDA policy and handbooks; and USDA regulations and instructions, including: (1) requirements relating to dry, chilled, and frozen product received directly from USDA and (2) requirements for food safety and food recalls.

b. Assume full responsibility for compliance with Federal regulations, State rules, and policies; the requirements of this Agreement; any amendments executed by the Parties; and any addenda which may be required by TDA.

c. TEFAP Contracting Entity only – Obtain insurance to protect the value of USDA Foods in its facilities, in the amount compliant with Federal regulations, State rules, and policies.

d. As applicable, ensure Food Service Management Company (FSMC) is effectively utilizing USDA Foods made available to them per agreement between CE and FSMC.

e. Promptly provide to TDA any updated information pertinent to this Agreement, in writing.

f. CEs receiving direct shipments from USDA – Enter receipt information into the authorized food tracking system within 24 hours of receipt of shipment; notify TDA immediately of significant damages and/or shortages.

g. TEFAP Contracting Entity only – Fairly and equitably distribute USDA Foods, as ingredients of prepared meals or food packages, only to eligible person and households (or, if applicable, to qualified agencies and organizations), first come, first served.

h. Request USDA Foods only in amounts that will be properly stored and fully utilized without waste.

i. TEFAP Contracting Entity only – Not require recipients or, if applicable, eligible agencies and organizations to pay for USDA Foods in money, materials, or service.

j. As applicable, abide by TDA requirements for receiving shipments of USDA Foods directly from USDA.

k. As applicable, use USDA Foods in an established food service operation to benefit persons and households who are eligible.

l. As applicable, not reduce the amount of food received from other sources as a result of receipt of USDA Foods.

m. As applicable, provide adequate facilities and personnel to handle, store, safeguard, and/or distribute USDA Foods.

CE choosing to participate in processing of USDA Foods shall:

n. As applicable, ensure cooperative inter-local agreement outlines the USDA Foods activities to be managed by the cooperative and the role of the CE in the cooperative; and, as requested, provide a copy of the inter-local agreement to TDA.

o. As applicable, ensure that USDA Foods activities outlined in the cooperative inter-local agreement does not violate USDA/TDA guidance, regulations, and/or procedures.

p. Effectively manage entitlement dedicated in the authorized system to USDA Foods processing.

q. If applicable, coordinate with co-op coordinator the use of USDA Foods processing balances in a timely basis.

r. On a regular basis, track and manage USDA Foods processing inventory balances in processor's tracking system (for example, K12, ProcessorLink, etc.); verify, for accuracy, end products sold through a distributor, including USDA Foods value discounts and pounds used; verify processing option(s), delivery destination, and assigned distributor.

s. As applicable, verify receipt of end products delivered by either state-contracted warehouse or directly to CE to ensure the following:

    1. End products received match deliver order form.
    2. End products received match Bill of Lading prior to signing deliver invoice.
    3. Damaged cases are not accepted; note damages on the Bill of Lading and return with driver.

t. Notify TDA and, if applicable, processing co-op coordinator when requesting to transfer pounds to a different processor, and include justification for the transfer.

u. Utilize processing pounds in a timely manner; comply with Federal regulations to not exceed a six-month inventory supply.

v. Report to TDA and, if applicable, to processing co-op coordinator issues and/or concerns with USDA Foods processing.

w. Ensure all initiated bids/request for proposals (RFPs), including those developed by the processing cooperative, follow all State and Federal procurement regulations and requirements.

x. As applicable, CE or cooperative representative shall send RFP invitations to all approved processors in Texas. There shall be no limitations within categories. (For example: Solicitations for further processing of bulk cheese must be sent to all Texas-approved cheese processors.)

y. As applicable, CE or cooperative representative shall negotiate pricing and shall award bids only to processors with a National Processing Agreement and State Participation Agreement, or with a Master Processing Agreement with TDA.

z. As applicable, CE shall enter processing requests into the authorized system by the required TDA deadline.

aa. When ordering for a new school year, project June carryover balance to avoid ordering excess pounds for the new school year.

V. Contracting Entity Roles and Responsibilities Related to Accountability and Reporting

Upon execution of this Agreement, CE shall:

a. Allow TDA, USDA, Government Accountability Office (GAO), and representatives of other appropriate agencies to inspect facilities and records and to audit, examine, and copy records during normal working hours.

b. Maintain all program records for a minimum of three years following either the end of the Federal fiscal year in which services were provided or the expiration or termination date of a contract, or for a period greater than three years, if necessary, to resolve any litigation, claims, or audit findings.

c. Comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired after November 6, 1986, who will perform any labor or service under this Agreement.

d. Comply with TDA policies and instructions for conducting financial and compliance audits. Additionally, comply with Single Audit Act requirements by obtaining an audit for those fiscal years in which single audit criteria applies. CE understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an investigation in connection with those funds. CE further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. CE will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through CE and the requirement to cooperate is included in any subcontract it awards.

As applicable, CE shall:

e. Maintain receipts, freight bills, notices of arrival, availability, and issuance of USDA Foods; inventory control sheets and storage facility review records (including inventory sheets and review records for leased storage space); and financial and supporting documents, statistical records, and other records pertinent to the services for which a claim was submitted.

f. TEFAP Contracting Entity only – Collect certain data including, but not limited to, reports about the number of individuals served.

g. Pay all applicable costs incurred with a state-contracted warehouse for storage, delivery, or pickup incurred with the allocation of USDA Foods.

h. Keep records of nonexpendable property acquired under the Agreement for three years after the final disposition of the property.

i. Provide to TDA, at the time of a TDA review, or anytime at TDA's request, a copy of the current health inspection certificate, current pest control records, and any other licenses required for the CE's storage facilities.

VI. Contracting Entity Roles and Responsibilities Related to Misuse of USDA Foods

Upon execution of this Agreement, CE:

a. Shall reimburse TDA, according to TDA procedures, for any improper distribution or use of USDA Foods, or for any loss of, or damage to, USDA Foods caused by the CE's fault or negligence.

b. Acknowledges that any misuse of USDA Foods may cause CE to be disqualified from program participation, and that reinstatement is at USDA and TDA option.

c. Acknowledges that embezzlement, misuse, theft, or obtainment by fraud of USDA Foods or, as applicable, USDA Foods-related funds, assets, or property shall be subject to Federal or State criminal prosecution.

d. Hereby certifies that CE and its subagencies, if any, have and preserve a right to assert claims against other persons, agencies, and organizations to which USDA Foods are delivered for care, handling, or distribution; and, furthermore, may take action to obtain restitution in connection with claims for improper distribution, use, loss, or damage to USDA Foods.

VII. Certifications

Upon execution of this Agreement, CE certifies all of the following:

a. CE's annual payment of Texas franchise taxes is current, if CE is subject to the State of Texas franchise tax. A false statement regarding franchise tax status shall be treated as a material breach of this Agreement and may be grounds for termination of this Agreement at the option of TDA.

b. That neither it nor its principals are presently debarred, suspended, or proposed for debarment; or are declared ineligible or voluntarily excluded from participating in this Agreement by any Federal department or agency or by the State of Texas. CE shall immediately provide written notice to TDA if at any time the CE

learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. CE may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the CE knows that the certification is erroneous.

c. That it does not owe a single substantial debt or a number of outstanding debts to a Federal or State agency. A false statement regarding the CE's status will be treated as a material breach of this Agreement and may be grounds for termination of this Agreement at the option of TDA.

d. Under Texas Family Code § 231.006, a child support obligor who is more than 30 days delinquent in paying child support or a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments under this Agreement. Under Section 231.006, Texas Family Code, CE certifies that the individual or business entity named in this Agreement, and any individual who is a partner, shareholder or owner with at least 25% interest in the business entity, is not ineligible to receive the specified grant, loan, or payment, and acknowledges that this contract may be terminated if this certification is inaccurate.

e. That if it is a corporation, it is a non-profit, tax-exempt corporation.

Upon execution of this Agreement, CE certifies understanding of and compliance with the following:

f. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CE, to 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 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.

g. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an officer or employee of a Member of Congress in connection with this Federal contract, contract, grant, loan, or cooperative agreement, the CE shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

h. The CE shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

i. The CE understands that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

j. This certification is made in consideration of, and for the purpose of, obtaining the following:
    1. Any and all Federal financial assistance
    2. Grants and loans of Federal funds
    3. Grants or donations of Federal property
    4. Reimbursable expenditures
    5. Interest in property
    6. The detail of Federal personnel
    7. The sale and lease of Federal property
    8. The permission to use Federal property or interest in such property

9. The furnishing of services either without consideration, at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient
10. Recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient
11. Any improvements made with Federal financial assistance extended to the program applicant by TDA, including any Federal agreement, arrangement, or other contract that has one of the following purposes:
    i. The provision of cash assistance for the purchase of food
    ii. Cash assistance for purchase or rental of food service equipment
    iii. Any other financial assistance extended in reliance on the representation and agreements made in this certification.

k. Committing fraud or abuse of the programs may subject the CE to criminal prosecution under applicable, Federal, State or local laws, in addition to sanctions imposed by the State.

l. Compliance with drug-free workplace requirements in 2 CFR Part 421, which adopts the Government-wide implementation (2 CFR Part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

VIII. Confidentiality

a. CE agrees to use any information that is received in its capacity as a contractor to TDA — whether written or oral, formal or informal — for the following purposes only:
    1. To provide services and/or deliverables required or requested under this Agreement
    2. To provide advice, opinion, or recommendation requested by TDA in the course of fulfilling the duties prescribed under this Agreement
    3. To assist TDA in developing any documents, reports, working papers, evaluations, schedules, or instructions necessary to fulfill the requirements of this Agreement

b. CE further shall regard any such information as confidential and shall not disclose, reveal, communicate, impart, or divulge the information of any summary or synopsis of the information in any manner or any form whatsoever, except under the following circumstances:
    1. When authorized in writing by TDA
    2. When required by court order, subpoena, or ruling of the Attorney General of Texas
    3. When advised by legal counsel that disclosure is required by law or legal process
    4. When the information has previously been released to the general public by TDA
    5. When required to brief or inform a superior, provided the superior is informed of nondisclosure requirements
c. The CE shall implement the following information technology standards to ensure the confidentiality of information:
    1. Network Security: CE shall maintain network security which includes the use of a firewall, an industry recognized antivirus program on all machines, and unique user names and passwords to access network resources. CE agrees to provide maintenance of a secure processing environment, and acknowledges that this includes but is not limited to the timely application of patches, fixes, and updates to operating systems, applications, and antivirus software. If TDA detects a security incident involving the CE, or the CE's third party vendor, the CE is required to comply with any requests by TDA related to the security incident.
    2. Data Security: CE shall preserve the confidentiality, integrity, and accessibility of TDA data in motion or at rest with administrative, technical, and physical measures that conform to generally recognized industry standards and best practices.
    3. Data Storage: CE shall ensure that any and all TDA data will be stored, processed, and maintained solely on designated computers/servers; and that no TDA data will be transferred to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of the CE's designated backup and recovery processes and encrypted in accordance with the Data Encryption provision below.
    4. Data Transmission: CE shall ensure that any and all electronic transmission or exchange of system and application data with TDA shall take place via secure means (HTTPS, SFTP, or equivalent).
    5. Data Encryption: CE shall store all TDA data in encrypted form, using a commercially supported encryption solution. CE further shall ensure that any and all TDA data defined as personally identifiable information under current regulations is likewise encrypted. Encryption solutions will be deployed with no less than a 128-bit key.
    6. Data Re-Use: CE shall ensure that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of CE. CE further shall ensure that no TDA data of any kind shall be transmitted, exchanged, or otherwise passed to other vendors or interested parties except as specifically required to operate the programs. If data is shared with a vendor to operate the programs, the same security requirements apply to the CE's third party vendor. Any other release of information requires specific agreement in writing by TDA.
    7. End of Agreement Data Handling: CE shall, upon termination of the Agreement, erase, destroy, and render unrecoverable all TDA data; and certify in writing that these actions have been completed within 30 days of termination of this Agreement or within 7 days of the request of an authorized TDA official, whichever comes first. CE also warrants that if hardware is replaced during the Agreement period, the same destruction rules apply.

8. Security Breach Notification:
    i. CE shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personal identification information or other another event requiring notification.
    ii. In the event of a breach of any of CE's security obligations or other event requiring notification under applicable law, CE shall notify the following individuals within 48 hours:

        Information Security Officer
        Financial Services Division
        Texas Department of Agriculture
        800-835-5832

        Assistant Commissioner
        Food and Nutrition Division
        Texas Department of Agriculture
        877-839-6325

IX. Civil Rights

a. By executing this Agreement, CE shall comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352) 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. The CE also shall comply with Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112), the Americans with Disabilities Act of 1990 (Public Law 101-336), Title IX of the Education Amendments of 1972 (7 CFR Part 15a), the Age Discrimination Act of 1975 (Public Law 94-135), all amendments to each; and all requirements imposed by the regulations issued pursuant to these acts. In addition, the CE shall comply with Title 4, Part 1, Chapter 24, of the Texas Administrative Code. These provide in part that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability be excluded from participation in, or denied any aid, care, service, or other benefits provided by Federal and/or State funding; or otherwise be subjected to discrimination.

b. The CE shall compile data, maintain records, and submit reports as required to permit effective enforcement of the above Acts; and permit authorized TDA and USDA personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with the above Acts. If there are any violations of this assurance, TDA and USDA have the right to seek judicial enforcement of this assurance. This assurance is binding on the CE, its successors, transferees, and assignees during the term that it receives assistance, or retains possession of any assistance from TDA. The person whose signature appears on this Agreement is authorized to sign this assurance on behalf of the CE.

c. The CE shall ensure that civil rights training is provided to subagencies according to TDA guidelines.

X. Signatures

We, the undersigned, do hereby make and enter into this Agreement. Upon signing this Agreement, the CE official establishes that he or she has the authority to enter into a written agreement with TDA. This Agreement contains all the terms and conditions agreed upon by the Parties. CE certifies that the information contained in this document is true and correct to the best of its knowledge and is provided for the purpose of obtaining Federal assistance. CE shall comply with the Federal regulations, and State policies and procedures as issued and amended by TDA. CE understands that the deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal laws.

Name of CE Authorized Representative (type or print)	Title of CE Authorized Representative		
Street Address of CE	City	State	Zip
Mailing Address of CE (if different from above)	City	State	Zip
Signature of CE Authorized Representative	Date of Signature of CE Authorized Representative		

For TDA Use Only

Name of TDA Representative (type or print)	Title of TDA Representative
Signature of TDA Representative	Date of Signature of TDA Representative