

SUMMER FOOD SERVICE PROGRAM – AGREEMENT

PDE-1040 (11/08)

INSTRUCTIONS: The original and one copy of this Agreement must each be signed and submitted to PDE with the pre-application documents. When this agreement is approved, a copy will be returned to the sponsor. This is a permanent agreement. Please maintain your copy as part of your permanent records.

NAME AND MAILING ADDRESS OF SPONSOR

AGREEMENT NUMBER _____
(State will assign)

In order to carry out the purpose of section 13 of the National School Lunch Act (42 U.S.C. 1761) as amended, and the regulations governing the Summer Food Service Program (SFSP) issued hereunder 7 CFR Part 225 (hereinafter referred to as the "Program"), the Department of Education, Commonwealth of Pennsylvania (hereinafter referred to as the "Department," or "PDE") and the Sponsor, whose name and address appear above covenant and agree as follows:

THE DEPARTMENT AGREES, upon the conditions stated in this Agreement, to reimburse the sponsor in connection with meals served to children at the sites listed annually in Schedule A. During any fiscal year, the amount of reimbursement for meals served shall be paid in the amount equal to the number of meals, by types, served to children multiplied by the applicable rates of reimbursement. Sponsors are allowed to combine their operating and administrative reimbursements to pay for any allowable cost, whether operating or administrative.

THE SPONSOR REPRESENTS AND WARRANTS THAT:

It will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. 2000d et seq.) and all requirements imposed by the regulations of the Department of Agriculture (7CFR 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 grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the program applicant receives Federal financial assistance from the Department; and hereby gives assurances 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 and loans of Federal funds; reimbursable expenditures; grants or donations of Federal property and interest in property; the detail of Federal personnel; and the sale and lease of, and the permission to use, Federal property or interest in such property of 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 cash assistance for the purchase of food, and cash assistance for purchase 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 program applicant 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 need to ascertain compliance with Title VI. If there are any violations of this assurance, the Department of Agriculture; Food and Nutrition Service, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant, its successors, transferees, and assignees as long as they receive assistance or retain possession of any assistance from the Department. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the program applicant.

THE DEPARTMENT AND SPONSOR MUTUALLY AGREE THAT:

1. Schedule A or an equivalent computer printout shall be a part of this Agreement and submitted annually.

2. Sites may be deleted from or added to Schedule A/Site Information Sheet annually as need arises: provided, however, that no site may start serving meals until the Department issues written notice of approval of the site.
3. No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise there from; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
4. The terms used in this Agreement have the same meaning as set forth in the Federal Regulations.
5. This Agreement may be terminated for convenience if both the Department and the Sponsor agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The effective date of termination shall be agreed upon by both parties and termination procedures shall be in accordance with Federal Regulations.
6. Whenever it is determined that the Sponsor has failed to comply with the conditions of the Program, the Department may terminate the Sponsor's participation by written notice. When a program has been terminated for cause, any payments made to the Sponsor or any recoveries by the Department from the Sponsor shall be in accordance with the legal rights and liabilities of the parties.

RECORDKEEPING REQUIREMENTS

The Sponsor must keep full and accurate records of its food service operations to serve as a basis for Claims for Reimbursement and for audit and review purposes. All such records must be maintained for a period of three years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit. Upon request, the Sponsor shall make all such records available to the Department, General Accounting Office representatives from the United States Department of Agriculture, or authorized representatives for audit or administrative review at a reasonable time and place. The records to be kept include the following:

1. Meals
 - a. Daily number of first and second meals served to children, by type of meal. Meal counts taken at point of service.
 - b. Daily listing of meals served to adults, by type of meal.
2. Program Income
 - a. From Federal reimbursement.
 - b. From adults' payments.
 - c. From all other sources.
3. Program Expenditures
 - a. For food use. Purchases of food and other items used in this program must be billed separately from items used for other purposes.
 - b. For labor.
 - c. For administrative expenses. Part-time work must be logged.
 - d. For rental of equipment. Rental agreement must be pre-approved by PDE.
4. Administrative Records
 - a. Documented pre-approval visits for all sites.
 - b. Visits to sites. (Review forms)
 - c. Training sessions for Sponsor and site personnel.
 - d. All contracts with food service management companies.
 - e. Procurement list completed (if applicable).

FEDERAL ASSURANCE CLAUSE

Contractor's activities under this contract shall be carried out on a nondiscriminatory basis in accordance with 34 CFR Parts 100, 104, and 106 and 45 CFR Part 90 (relating to nondiscrimination on the basis of race, color, national origin, sex, handicap or age), the Civil Rights Act of 1870, as amended (42 U.S.C. §§1981 et seq.) and the Federal Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), and shall be carried out in accordance with the Fair Labor Standards Act (29 U.S.C. §§201-219), Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. §§1437(c), 1437(f), 4601, 4602, 4621-4633 and 4655), Equal Pay Act (29 U.S.C. §206), 34 CFR Parts 76, 80, 82, 98 and 99, and Office of Management and Budget Circulars A-87, A-102, A-110, A-128 and A-133, as applicable. Contractor certifies that it is acting in compliance with the provisions of 34 CFR Part 85 (relating to debarment and suspension), 20 U.S.C. §3224(a) (relating to drug and alcohol abuse prevention programs) and 31 U.S.C. §1352 (relating to lobbying). The above required certification shall be in such manner as required by applicable law. If contractor is a school district, intermediate unit, area vocational-technical school, or other local educational agency or a state or public agency, it further assures that its employees and officials, whose principal employment is in connection with an activity funded with federal grant money, shall not engage in any political activity and barred by the Hatch Act, 5 U.S.C. §§1501 et seq.

COMMONWEALTH CONTRACTOR INTEGRITY PROVISIONS

1. For purposes of this clause only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.
 - a. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
 - b. **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.
 - c. **Sponsor** means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest.
 - d. **Financial interest** means:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - e. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The Sponsor shall maintain the highest standards of integrity in the performance of the Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The Sponsor shall not disclose to others any confidential information gained by virtue of the Agreement.
4. The Sponsor shall not, in connection with this or any other Agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

THE SPONSOR FURTHER UNDERSTANDS THAT:

No Sponsor employee, officer or agent shall participate in the selection, award or administration of a contract in which Program funds are used, where, to his knowledge, he or his family, partners, or organization in which he or his immediate family, partners or organization has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment.

For each session for which meals will be claimed at sites that offer a regularly scheduled organized cultural or recreational activity to enrolled children for whom a daily attendance register is maintained, at least 50% of the enrolled children are approved for free or reduced-price school meals.

Failure to comply with any financial management requirements in this Agreement may result in a reduction in the amount of reimbursement in a given month or upon completion of the operation.

It provides an ongoing year-round service to the community which it proposes to serve under the Program, except in the case of residential and migrant camps and unless this requirement is waived in writing by the State agency.

5. The Sponsor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to any one any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the Sponsor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Agreement except as provided therein.
7. Except with the consent of the Commonwealth, the Sponsor shall not have a financial interest in any other Sponsor, or supplier providing services, labor, or material on this project.
8. The Sponsor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The Sponsor, by execution of the Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
10. The Sponsor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Sponsor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Sponsor's business or financial records, documents or files of any type or form, which refers to or concern the Agreement. The Sponsor shall retain such information for a period of three years beyond the termination of the Agreement unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Sponsor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Sponsor to complete performance hereunder, and debar and suspend the Sponsor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

MEAL REQUIREMENTS

1. Each Sponsor participating in the Program shall serve one or more of the following types of meals, as provided in its approved application:
 - a. Breakfast
 - b. Lunch
 - c. Supper
 - d. Supplemental food service between such other meals.
2. Each meal served in the Program shall contain, as a minimum, the indicated food components in accordance with all of the provisions contained in part 225.16 of the Federal Regulations. The Invitation-to-Bid must contain a cycle menu approved by the Department.
3. If emergency conditions prevent a Sponsor normally having a supply of milk from temporarily obtaining delivery thereof, the Commonwealth may approve the service of breakfasts, lunches, or suppers or supplemental food without milk during the emergency period.

4. The inability of the Sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases the Commonwealth may approve the service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of all meals.
5. Substitutions may be made in paragraphs 1 a, b, and c and in paragraph 2 of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority, which includes recommended alternate foods.
6. The Department of Education, Commonwealth of Pennsylvania may approve variations in the food components of the meals for any Sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs. Prior written approval by the Department is required before meals are served.

FINANCIAL MANAGEMENT

1. Records of operating costs must be kept separate and apart from any and all administrative costs. Any portion of administrative costs not recovered by any sponsor from Federal payments shall not be claimed by the Sponsor as an operating cost, nor shall any unrecovered portion of operating costs be claimed as administrative cost.
2. The Sponsor, shall subscribe to the procurement standards applicable to food and nutrition service funds for use by Sponsors as established in Office of Management and Budget (OMB) Circular A-102/A-110 Attachment O and shall maintain standards of conduct to govern the performance of its officers, employees and/or agents, shall conduct procurement transactions in a manner that provides maximum open and free competition, and shall maintain a system for contract administration which ensures the adequacy of contractual clauses, contractor conformance with terms, conditions and specifications of the contract or order and ensure adequate timely follow-up of all purchase actions, and agrees to use the standard contract distributed by the Department for the purchase of supplies and services from any company designated by the Department as a Food Service Management Company.
3. Sponsors contracting with Food Service Management Companies shall retain final financial and managerial responsibility for the program.
4. The Sponsor understands that income accruing to the Program and applicable program credits such as food returns, allowances and discounts, etc., shall be clearly identifiable in its recordkeeping system and shall be applied so as to reduce cost for the period in which it is received.
5. The Sponsor subscribes to the Standards for Child Nutrition Program Financial Management published by the Food and Nutrition Service (FNS Instruction 796-4, Rev. 3); shall maintain its financial management system for program accountability in accordance with these Standards and states that its accounting records are kept on an accrual basis.
6. The Sponsor will claim use allowance only on equipment, which is owned by the Sponsor and for only those months for which equipment was actually used in this program prorated to days of operation. The sponsor warrants that such equipment was not purchased in whole or in part with Federal funds.
7. The Sponsor acknowledges that the Department has established a list of certain costs not eligible for payment from grant funds and agrees that claims for payment will not include the following costs:
 - a. Costs of purchasing land, acquiring or construction buildings, or making alterations to existing buildings.
 - b. Cost of purchasing nonexpendable equipment, whether food service, office, automotive or any other kind of equipment; or costs of repairs to any equipment that materially increases the value or useful life of the equipment.
 - c. Use allowance for buildings or any kind of equipment except food service equipment, and use allowance for food service equipment that is not specifically permitted in the Sponsor's written agreement with the State agency. No equipment purchased with Federal assistance may have a use allowance applied. Use allowance may not be applied to idle equipment.
 - d. Rental fees claimed by the Sponsor for equipment already owned by the Sponsor.
 - e. Rental of only dining space, except when school facilities are utilized.
 - f. Contractual agreements, which are classified as rental-purchases or lease with an option to purchase.
 - g. Donations used, whether of labor, food, supplies, or any other kind.
 - h. Interest or other financial or legal charges on money borrowed by Sponsors.
 - i. Fines and penalties.
 - j. Bad debts.
8. The Sponsor may elect to receive advance program payments according to provisions of the regulations. The Sponsor understands and agrees that failure to submit Claims for Reimbursement according to the specified submission schedule(s) may be cause for the Department to claim against the Sponsor in accordance with the regulations for any portion(s) of program payments advanced, which have not been deducted from a valid Claim for Reimbursement.
9. Claims not received within 60 days after the claiming month in which the Sponsor participated will not be paid by the state agency.

THE SPONSOR AGREES TO:

1. Provide adequate supervisory and operational personnel for overall monitoring and management of each food service site. Hire adequate personnel to visit all sites listed in Schedule A prior to beginning operation each year. All new and prior year problem sites must be visited and documentation submitted to PDE at least four days before the planned opening. Conduct site visits at least once in the first week of operation under the Program and take promptly such actions as are necessary to correct deficiencies found at the time of the initial visit. Review food service operations at every site listed annually in Schedule A at least once during the first four weeks of operation and thereafter to maintain a reasonable level of site monitoring.
2. Maintain on file documentations of preapproval and site review visits.
3. Serve, without cost to all children, meals that meet the minimum requirements prescribed in this Agreement during period(s) designated as the meal service period(s) on the Schedule A/Site Information Sheet submitted annually.
4. Prior to the start of the Program each year, hold training sessions for its personnel with regard to program duties and responsibilities; and allow no site to operate until its personnel have attended such training sessions (7 CFR Part 225.15(d)(1)).
5. Claim reimbursement only for the types of meals specified in the Agreement served to children during the approved meal service period at sites listed in Schedule A/Site Information Sheet submitted annually, and account separately for any meals served to Program Adults.
6. Document via applications that for all residential camp sites and urban sites to meeting the 50% area eligibility listed in Schedule A/Site Information Sheet submitted annually that reimbursement will be claimed only for those children who are approved for free or reduced-price meals based on current family size and income guidance.
7. Utilize, to the maximum extent feasible, existing school food service facilities.
8. Ensure that no site is participating in more than one of these programs simultaneously - the Summer Food Service Program, the Special Milk Program or the Child and Adult Care Food Program. Additionally, the sponsor must ensure that the site is not participating in a summer food program offered by another sponsor in one of the Child Nutrition Programs.
9. Operate the food service in accordance with the provisions of Program regulations and any instructions and handbooks issued by FNS or the Department.
10. Follow the bidding procedures and the contractual and procurement procedures set forth in 7 CFR Part 225.15 of the Federal regulations.
11. Accept final financial and administrative responsibility as a local government or nonprofit organization for total program operations at all sites listed on Schedule A/Site Information Sheet submitted annually.
12. Provide a regularly scheduled organized activity along with the food service for the children attending each site listed on Schedule A/Site Information Sheet submitted annually.
13. Ensure that children remain on site during the meal services.
14. Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations.
15. Purchase food designated as plentiful by the Department where possible.
16. Accept and use, in as large quantities as may be efficiently utilized in the Program, foods offered as a donation by the Pennsylvania Department of Agriculture.
17. Submit Claims for Reimbursement in accordance with procedures established by the Department.
18. Release the Department from any and all liability for personal injury arising out of the operation of this program to any person or persons injured on or near the premises of the sponsor or its designated food service sites.
19. Operate the program only at sites over which the sponsor has direct operational control, as required by 7CFR, Part 225.14(d)(4).

ADUIT REQUIREMENTS

The Sponsor must comply with all federal and state audit requirements including: the Single Audit Act, as amended, 31 U.S.C. 7501 et. Seg.; OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, as amended; the Audit Provisions, incorporated into this Agreement by reference, and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the federal government. If the Sponsor is a local government or non-profit organization and expends total federal awards as noted in the Audit Provisions during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, the Sponsor is required to have an audit made in accordance with the provisions of OMB Circular A-133.

If the Sponsor expends total federal awards of less than the amount specified in OMB Circular A-133 during its fiscal year, it is exempt from these audit requirements, but required to maintain auditable records of federal awards and any state funds which supplement such awards, and to provide access to such records by federal and state agencies or their designees.

SUBMISSION OF AUDIT INFORMATION TO THE COMMONWEALTH

The Sponsor shall submit copies of the audit report package to the Commonwealth, which shall include:

- a. Data collection form.
- b. Financial statements and schedule of expenditures of federal awards.
- c. Auditor's reports on the financial statements and schedule of expenditures of federal awards, internal control and compliance as well as a schedule of findings and questioned costs.
- d. Summary schedule of prior audit findings.
- e. Corrective action plan.
- f. Management letter comments.

In instances where a federal program-specific audit guide is available, the audit report package for a program-specific audit may be different and should be prepared in accordance with the audit guide and OMB Circular A-133.

The number of copies to be submitted shall equal one for the Bureau of Audits (archival copy) plus one for each Commonwealth agency which provided federal pass-through awards to the entity, as reflected in the entity's Schedule of Expenditures of Federal Awards.

The audit report package should be submitted to the:

Office of the Budget/Bureau of Audits
Division of Subrecipient Audit Review
303 Walnut Street
Verizon Tower - Strawberry Square, 6th Floor
Harrisburg, PA 17101
Telephone Number: 717-783-9120
Fax Number: 717-783-0361

GENERAL AUDIT PROVISIONS

The Sponsor is responsible for obtaining the necessary audit and securing the services of a certified public accountant or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of federal awards.

The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by Commonwealth or federal agencies. Any such additional audit work will rely on work already performed by the Sponsor's auditor, and the costs for any additional work performed by the federal or state agencies will be borne by those agencies at no additional expense to the sponsor.

Audit working papers and audit reports shall be retained by the Sponsor's auditor for a minimum of three years from the date of issuance of the audit report, unless the Sponsor's auditor is notified in writing by the Commonwealth or the cognizant or oversight federal agency to extend the retention period. Audit working papers shall be made available upon request to authorized representatives of the Commonwealth, the cognizant or oversight agency, the federal funding agency, or the General Accounting Office.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing a Member of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, or modification of a Federal contract, grant, loan or cooperative agreement.

The language of this certification will be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds and all subrecipients shall certify accordingly. Sponsors receiving more than \$100,000 in federal funds must complete a lobbying activities disclosure form.

CERTIFICATION STATEMENT

WE HEREBY CERTIFY that all of the above information is true and correct. We understand that this information is being given in connection with the receipt of federal funds; that the PA Department of Education officials may for cause, verify information; and that deliberate misrepresentation will subject us to prosecution under applicable State and Federal criminal statutes. Sponsor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.

PROGRAM APPROVAL SECTION

IN WITNESS THEREOF, two parties have read the Agreement, agree to the requirements and take financial and administrative responsibility for the Agreement.

Typed name and Title

Signature and Date

Typed name and Title

Signature and Date

PENNSYLVANIA DEPARTMENT OF EDUCATION

By _____
Title _____
Date _____

This permanent agreement for serving meals becomes effective on the _____ day of _____ 20____ unless otherwise terminated by the Department subject to submission of annual application and availability of funds.

Reimbursement will not be made for any meals served outside of the approved dates as indicated in the organizations annual application.

Costs incurred to purchase food and to organize the sponsor's SFSP prior to the effective date of this agreement must be documented and attributable to conducting SFSP.