



OFFICE OF THE STATE  
SUPERINTENDENT OF EDUCATION

## Permanent Agreement Child and Adult Food Program/Summer Food Service Program

### Health and Wellness

The Office of the State Superintendent of Education (OSSE) Division of Health and Wellness ensures that children and families receive year-round access to well-balanced meals by providing federal reimbursements, training, and nutrition education to providers. The Division of Health and Wellness assists providers in maintaining a high level of compliance with the United States Department of Agriculture's (USDA) rules and regulations so they can improve the overall health and learning potential of District residents.

### Mission

Healthy bodies and minds are the foundation of academic success. The Division of Health and Wellness leverages programming, partnerships, policy, and data to remove health barriers to learning so that people of all ages and backgrounds are prepared to succeed in school and life.

### General Information and Instructions:

This Permanent Agreement represents the USDA's requirement for State Agencies (SA) to provide each instruction with a single Agreement when an SA administers any combination of the Child Nutrition Program(s).

This Agreement shall be effective on the earliest date specified by the SA Director or designee and remain in effect unless terminated as provided herein.

By accepting and certifying this Agreement, the Institution agrees to comply with the requirements for all Programs in which it is approved to participate.

Disclaimer: This agreement includes information regarding the Federal requirements for each Child Nutrition Program overseen by the District of Columbia (D.C.) SA Child Nutrition Program Team; however, this is not a comprehensive regulatory document. Please refer to the Code of Federal Regulations (CFR) for each program for a comprehensive version of each program's requirements.

### Definitions:

Child Nutrition Programs: Federally funded nutrition programs administered by the USDA according to the National School Lunch Act of 1946 (P.L. 79-396), as amended, and the Child Nutrition Act of 1966 (P.L. 89-642), as amended. Specifically, for this agreement:

the National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Service, Fresh Fruit and Vegetable Program (FFVP), Special Milk Program (SMP), Summer Food Service Program (SFSP), Child and Adult Care Food Program (CACFP) and Food Distribution Program (FDP) are herein referred to as Program(s).

Federal Assistance: Any funding, property or aid that is provided to a State Agency, Sponsor, School Food Authority, Institution, or Program Recipient Agency for the purpose of providing Program benefits or services to eligible participants.

Institution: A sponsoring organization, child care center, outside-school-hours care center, or adult day care center, which enters into an agreement with the State Agency to assume final administrative and financial responsibility for Program operations.

Recipient Agency (RA): Any eligible nonprofit organization that receives food under 7 CFR Part 250, Food Distribution Program.

School: An educational unit as defined in 7 CFR Parts 210, 215, and 220.

School Food Authority (SFA): The legal governing body that is responsible for the administration of one or more schools and has the legal authority to enter into an agreement with the State Agency to operate Child Nutrition Programs.

Sponsor: A public or private nonprofit or for-profit organization which is approved to operate a Child Nutrition Program as defined in 7 CFR Parts 225 and 226.

State Agency (SA): The state educational agency approved by the USDA to administer Child Nutrition Programs within the state. For the purposes of this agreement, the State Agency is the Office of the State Superintendent of Education (OSSE).

**In order to effectuate the purpose of the following statutes:** The Healthy Hunger-Free Kids Act of 2010 (HHFKA), The National School Lunch Act (NSLA), as amended (42 U.S.C. 1751 et seq.), the Child Nutrition Act of 1966 (CNA), as amended (7 U.S.C. 1771 et seq.), §32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), §§1 and 2 of the Act of August 11, 1939, as amended (15 U. S.C. 713c-2 and 713c-3), §§404 and 416 of the Agriculture Act of 1949, as amended (7 U.S.C. 1424 and 1431), §402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922), §205 of the Agricultural Act of 1956, as amended (7 U.S.C. 1855), the Act of August 29, 1958, as amended Revised July 22. (7 U.S.C. 1431 nt), §9 of the Act of September 6, 1958, as amended (7 U.S.C. 1431b), §201 of the Act of September 21, 1959, as amended (7 U.S.C. 1431c), the Act of September 13, 1960, as amended (7 U.S.C. 1431 nt), §205 of the Food and Agriculture Act of 1962, as amended (7 U.S.C. 1431b), §§106 and 1114(a) of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1446c – 1 and 1431e), the Commodity Distribution Reform Act and WIC Amendments of 1987, as amended ((7 U.S.C. 612c nt), §§412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended (42 U.S.C. 5179 and 5180), §709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a-1), and §19 of the National School Lunch Act (42 USC 1769a) as amended by §4304 of the Food Conservation and Energy Act of 2008 (P.L. 110-234), the Office of the State Superintendent of Education

(OSSE) herein referred to as the “State Agency (SA)” as the designated authority to administer the United States Department of Agriculture (USDA) Child Nutrition Programs and the Institution, whose name and address appear above, agree as follows:

## OVERVIEW OF THE USDA CHILD NUTRITION PROGRAMS

The USDA’s Food and Nutrition Service (FNS) administers several programs that provide healthy food to children every school day. These programs include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Service, Fresh Fruit and Vegetable Program (FFVP), Food Distribution Program (FDP), Special Milk Program (SMP), Summer Food Service Program (SFSP) and the Child and Adult Food Program (CACFP). SAs around the country administer each Program to participating Institutions to help create healthy environments, and fight hunger and obesity by reimbursing Institutions for providing healthy meals to children.

The Healthy, Hunger-Free Kids Act of 2010 directed USDA to update the SBP, NSLP, and CACFP meal patterns and nutrition standards based on the latest Dietary Guidelines for Americans. Institutions are responsible for implementing any and all revisions to the Federal regulations, as necessary. All Institutions shall meet Federal meal requirements, though decisions about which specific foods to serve and how they are prepared and distributed are made by the local Institution.

The SA agrees, to the extent of funds available, to reimburse the Institution for the programs it operates, as designated below, in accordance with applicable regulations governing such Programs: National School Lunch Program and Afterschool Snack Service (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Fresh Fruit and Vegetable Program (Section 4304 of Public Law 110-234), Summer Food Service Program (7 CFR Part 225), Child and Adult Care Food Program (7 CFR Part 226), Food Distribution Programs (7 CFR Part 250), Determining Eligibility for Free and Reduced Price Meals (7 CFR Part 245), and under the Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as applicable, any amendments thereto. The SA agrees to make payments where applicable, in accordance with 7 CFR Part 240 (Cash in Lieu of Donated Foods), and any amendments thereto and/or to donate foods in accordance with Donation of Foods for Use in the United States, its territories, and Possessions and Areas under its Jurisdiction Regulations 7 CFR Part 250.

The Institution agrees to accept federal funds and/or donated foods in accordance with applicable regulations and any amendments thereto. The Institution, and participating schools under its jurisdiction agrees to comply with all provisions thereof, and with any instructions or procedures issued in connection therewith. The Institution further agrees to comply with applicable Program regulations and any amendments thereto, and to comply with all the provisions thereof, and with all D.C. statutes, administrative rules, policy manuals, memorandums, guidance, and instructions and any instruction or procedures issued by the USDA or the SA in connection therewith. The Institution further agrees to administer the Programs funded under this Agreement in accordance with provisions of 2 CFR Part 200 Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards, as applicable.

The Institution acknowledges and understands that per 7 CFR 225.6(I), criminal penalties and provisions established in section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)) state that: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

This agreement shall be effective in commencing on the date specified unless terminated earlier as provided herein. The SA may continue this Agreement each year thereafter, by notice in writing given to the Institution as soon as possible after funds have been appropriated by Congress for carrying out any of the purposes of the National School Lunch Act and of the Child Nutrition Act of 1966 and other applicable legislation during each year. Continuation of the Agreement, however, shall be contingent on an acknowledgment by the Institution, in writing, of its intention to continue program participation in accordance with the provisions outlined in this agreement. The Institution shall notify the SA whenever significant changes in program regulation or changes to existing policies occur in the operation of the Program(s).

#### **REQUIREMENTS FOR SFA PARTICIPATION IN NATIONAL SCHOOL LUNCH PROGRAM, SCHOOL BREAKFAST PROGRAM, AND SPECIAL MILK PROGRAM**

This section applies only if an effective date for the NSLP, SBP, or SMP has been entered at the end of this agreement and signed by the State Agency Director or, in their absence, a Program Manager.

The SFA shall conduct all program operations in accordance with federal regulations, 2 CFR Parts 200, 200.317 – 200.326 and USDA 7 CFR Parts 210, 215, 220, 245, and 250. SFA's shall also operate in accordance with FNS instructions, policies, and memorandum, as applicable, in addition to all state and local regulations, policies and procedures. This includes, but is not limited to, the USDA and D.C. SA Memorandum and requirements.

The SFA and participating sites, further agree to the following specific provisions:

1. Maintain a nonprofit school food service and observe the requirements for and limitations on the use of nonprofit school food service revenues set forth in 7 CFR § 210.14 and the limitations on any competitive school food service as set forth in 7 CFR §210.11. 5 Revised July 22.
2. Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service, or such other amount as may be approved in accordance with 7 CFR § 210.19(a).
3. Maintain records for three years plus the current year to demonstrate the SFA's compliance with the professional standards for school nutrition program directors, managers, and personnel established in 7 CFR § 210.30.

4. Maintain a financial management system as prescribed by the USDA under 7 CFR § 210.14(c).
5. Comply with the requirements of the USDA's regulations regarding financial management under 2 CFR Part 200.
6. Serve lunches, during the lunch period, that meet the minimum requirements prescribed in 7 CFR Part 210.
7. Price the lunch as a unit, except in non-pricing meal programs where, as described in the application, no specific charge is made.
8. Serve lunches free or at a reduced price to all children who are determined by the SFA to be eligible for such meals under 7 CFR Part 245.
9. Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid lunches served to eligible children in accordance with 7 CFR Part 210. Agree that the SFA official signing the claim shall be responsible for reviewing and analyzing meal counts to ensure accuracy as specified in § 210.8 governing claims for reimbursement. Acknowledge that failure to submit accurate claims will result in the recovery of an over claim and may result in the withholding of payments, suspension or termination of the program as specified in §210.25. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in § 210.26 shall apply.
10. Count the number of free, reduced price, and paid reimbursable meals served to eligible children at the point of service, or through another counting system, if approved by the SA.
11. All claims for reimbursement shall be in accordance with 7 CFR § 210.8.
12. Contracts shall follow contract provisions for termination for cause and for convenience by the grantee or sub grantee including the manner by which it will be affected and the basis for the settlement under Appendix II to Part 200.
13. The contract between a SFA and a Food Service Management Company (FSMC) shall be of a duration of no longer than 1 year; and options for the yearly renewal of a contract signed 6 Revised July 22. after February 16, 1988, may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification under 7 CFR § 210.16(d).
14. Comply with the requirements of the USDA's regulations regarding nondiscrimination under 7 CFR parts 15, 15a, 15b, 15c, 15d, and 15e.
15. Make no discrimination against any child because of their eligibility for free or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement.
16. Enter into an agreement to receive donated foods as required by 7 CFR part 250.

17. 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 and comply with the food safety requirements of 7 CFR § 210.13.

18. Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by USDA.

19. Maintain necessary facilities for storing, preparing, and serving food.

20. Upon request, make all accounts and records pertaining to its school food service available to the SA and to FNS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of three years after the date of the final claim for reimbursement for 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 resolution of the issues raised by the audit.

21. Maintain files of currently approved and denied free and reduced price applications which shall be readily retrievable by school and SA.

22. Maintain files of correctly approved and correctly denied free and reduced price applications. Also, record on file the names of children approved for free meals based on documentation, as specified in § 245.6(b)(5) certifying that the child is a member of a household currently approved to receive benefits under: the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance for Needy Families Programs (TANF), Food Distribution Program on Indian Reservations, the child is homeless, runaway, migrant, head start, or foster, as defined in § 245.2. If the applications or the documentation is maintained at the SFA, the documents shall be readily accessible by school staff.

23. Maintain full and accurate records of operations under this Agreement, including those set forth herein, and retain such records for a period of three years plus the current year to which they pertain, unless such records are part of an unresolved audit which thereby extends the three-year period, or any reason otherwise specified under paragraph 210.9(b) (17). Records of revenue and expenditures shall be maintained in such a manner as to reflect the nonprofit status of the food or milk service.

24. No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the SA with a list of all schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The SA may designate a month other than October for the collection of this information, in which case the list shall be provided to the SA within 60 calendar days following the end of the month designated by the SA. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of an Institution of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

## SCHOOL FOOD AUTHORITY RECORDKEEPING REQUIREMENTS:

The SFA shall keep full and accurate records of the food service program(s) as outlined above to serve as a basis for claims for reimbursement and for audit and review purposes. Records and documentation shall be maintained for a period of three years after submission of the final claim for the fiscal year or longer as required by an audit or investigation, as outlined in the NSLP Federal Regulations 7 CFR 210.23, 210.15 and corresponding regulatory provisions under the SBP 7 CFR Part 220 and the Determining Eligibility for Free and Reduced Priced Meals 7 CFR 245. The records which should be kept with respect to each program include but are not limited to the following:

- a. Documentation of participation data by school in support of the claim for reimbursement and data used in the claims review process.
- b. Production and menu records and, if appropriate, nutrition analysis records and documentation to support performance based cash assistance.
- c. Participation records to demonstrate positive action toward providing one lunch per day per child.
- d. Approved and denied applications for free and reduced-price lunches and a description of verification activities, including verified applications and any accompanying source documentation.
- e. Documentation of student eligibility for free meals as obtained through Direct Certification, Foster Care Agency or Homeless Agency liaison.
- f. Documentation of information used to determine claiming percentages/levels as assigned for those schools operating under Provisions 1, 2, or 3 or Community Eligibility Provision.
- g. Severe Need Breakfast documentation submitted for approval to the SA for consideration of the higher reimbursement rate.
- h. Records from the food safety program for a period of six months following a month's temperature records to demonstrate compliance and records from the most recent food safety inspection.
- i. Documentation used to determine the average price of paid lunches.
- j. Documentation of all revenue from the sale of non-program foods accrued to the non-profit school food service account.
- k. Documentation of revenue obtained from student payments, Federal reimbursement, food sales to adults, other sources, including loans to the program, and all a-la-carte sales.
- l. Food service expenditures (supported by invoices, receipts, or other evidence of expenditures) for food, labor, and other expenditures, including repayment of loans of the program.

m. Procurement documentation sufficient to detail the history of the procurement for any and all aspects of food services as they relate to the Programs outlined in this agreement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price under 2 CFR §200.318(I). This shall include all required documentation to support the SFA's assurance that proper federal and local procurement procedures were followed.

n. Documentation in support of compliance with Professional Standards regulation, as indicated in the Final Rule: Professional Standards for State and Local School Nutrition Programs Personnel as required by the Healthy Hunger-Free Kids Act of 2010.

### **REQUIREMENTS FOR SFA PARTICIPATION NSLP AFTERSCHOOL SNACK SERVICE:**

The NSLP offers cash reimbursement to help schools serve snacks to children in after-school activities aimed at promoting the health and well-being of children and youth in our communities. An afterschool care program shall (1) primarily provide care for children after school; (2) shall provide children with regularly scheduled activities in an organized, structured and supervised environment, and include educational or enrichment activities, such as mentoring or tutoring programs, that are distinct from any extracurricular programs organized primarily for scholastic, cultural, or athletic purposes. Organized interscholastic programs or community-level competitive sports are not eligible to participate. The programs shall meet state or local licensing requirements and state or local health and safety standards. All programs that meet the eligibility requirements for participating in NSLP may receive USDA reimbursement for after-school snacks.

1. To be reimbursed, the snacks shall contain at least two different components of the following four: a serving of fluid milk; a serving of meat or meat alternate; a serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice; a serving of whole grain or enriched bread (or an equivalent serving of a bread product) or a serving of cooked wholegrain or enriched pasta or noodle products.

2. SFAs shall review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year-round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter.

3. An after-school care program site is considered area eligible if it is located at a school or in the attendance area of a school where at least 50 percent of the enrolled children are eligible for free or reduced-price meals. For example, if a high school with less than 50 percent free or reduced-price school enrollment is located in the attendance area of a middle school that has 50 percent or more of the enrolled children eligible for free or reduced-price meals, then the afterschool care program located in the high school would be area eligible.

4. Snacks served in area-eligible afterschool care programs will be reimbursed at the free rate, regardless of an individual student's eligibility for free or reduced-price lunches. Snacks served in afterschool care programs that are not area-eligible will be reimbursed at the free, reduced-price



or paid rate depending on each individual's eligibility for free or reduced-price meals based on meal benefit applications. SFAs can claim no more than one snack per child per day. Reimbursement rates are announced each year in July by USDA.

## **REQUIREMENTS FOR SFA PARTICIPATION IN THE FRESH FRUIT AND VEGETABLE PROGRAM (FFVP)**

This section applies only if an effective date for the FFVP has been entered at the end of this agreement, and it has been signed by the State Agency Director or in their absence, the Program Manager. The SFA shall conduct all program operations in accordance with the FFVP as authorized by Section 19 of the National School Lunch Act (42 USC 1769a), as amended. SFA's shall also operate in accordance with FNS instructions, policies, and memorandum, as applicable, in addition to all state and local regulations, policies and procedures. This includes, but is not limited to, the USDA and D.C. SA Memorandum and requirements.

The SFA and participating sites further agree to the following specific provisions:

1. Funds will only be used for the purposes authorized by Section 19 of the National School Lunch Act (42 USC 1769a), as amended.
2. To abide by all of the requirements for administering the Program as stated in Section 19 of the National School Lunch Act (42 USC 1769a), as amended.
3. To provide funds to sites specified in the FFVP Agreement under the SFA's jurisdiction for the service of approved fresh fruits and vegetables in accordance with local, State, and Federal regulations and requirements.

## **REQUIREMENTS FOR SFA PARTICIPATION IN FOOD DISTRIBUTION PROGRAM**

Each year as part of the Food Distribution Program, USDA allocates entitlement funds to the SA for the District of Columbia administering the NSLP. These funds are intended to help offset the cost of serving NSLP compliant breakfasts, lunches and afterschool snacks to school children by providing quality food which an SFA would otherwise have to pay for as part of its nonprofit school food service.

This annual USDA Planned Assistance Level (PAL), often referred to as Entitlement, is made available to eligible RA or SFA for purchasing USDA Foods. The entitlement is based on the number of lunches claimed in the NSLP between July 1 and June 30 of the previous school year. SFA's are normally not eligible for the Food Distribution Program during their first year participating in the NSLP.

## **THE RECIPIENT AGENCY HEREBY AGREES TO THE FOLLOWING TERMS AND CONDITIONS:**

1. USDA donated foods, sometimes referred to as commodities, hereinafter referred to as USDA Foods for the purpose of this agreement, means all USDA donated foods, regardless of pack size, whether processed or not, and any fresh produce ordered with entitlement funds through the DoD Fresh Fruit and Vegetable Program (DoD FFVP). As such, USDA Foods will be requested and accepted only in such quantities as can be utilized in qualified meal service without waste and within the limits specified by the SA and/or stored for future use in amounts that can be utilized within a six-month period. Each RA will be responsible for controlling its inventory.

2. USDA Foods received under this agreement will be used solely for the benefit of those persons deemed eligible under the program(s) indicated above. Under no circumstance may USDA Foods be sold, traded, exchanged, or otherwise disposed of without prior written approval by the SA.
3. Normal food expenditures will not be reduced because of the receipt of USDA Foods, except that this provision shall not apply to the distribution of USDA Foods under Section 6 of the National School Lunch Act. The SA may request periodic proof in writing that food expenditures are not being reduced because of the receipt of these USDA Foods.
4. Facilities for proper storage of all USDA Foods requested and accepted will be provided by the RA in accordance with 7 CFR 250.14. Facilities shall safeguard against theft, spoilage, and other loss. The USDA Food shall be used in a First-In-First-Out manner. All USDA Foods should be stored on the premises of the RA. Whenever other storage is needed, a commercial warehouse, distributor, or other SA approved facility should be used. The RA shall maintain records at all times showing quantities of USDA Foods (lot number, contract numbers, etc.) stored off premises. The SA shall be notified in writing as to the location of all USDA Foods stored off premises so that at all times the SA's records and the RA's records will show where USDA Foods are being stored. The RA is held responsible for any loss resulting from negligence due to the acceptance of USDA Foods in greater quantities than can be efficiently utilized or from improper use, storage, care, or handling. The RA may be asked to replace any such loss of USDA Foods or to pay the SA the value of the USDA Food loss as determined by the SA.
5. The RA agrees to furnish, at all times, sufficient competent help and proper transportation, regardless of the size of the RA, to ensure prompt pick-up of USDA Foods at the time and place specified for distribution. The RA agrees to assume full responsibility for removal of USDA Foods at the distribution site, and further agrees that no claim of any kind will be made against the SA or USDA for any personal injury received during the removal of such USDA Foods. Each RA is required to appear at the distribution site at the time specified or it may not be possible for the RA to receive its distribution. Failure to appear also may hamper future participation under this program.
6. The RA receiving USDA Foods shall not discriminate against any child because of their inability to pay the full price of the meal.
7. Funds accruing from the sale of containers in which USDA Foods are received will be used solely for program purposes.
8. Records pertaining to the receipt and utilization of USDA Foods will be kept for a period of five years, from the close of the Federal fiscal year to which they pertain or longer if related to an audit or investigation in progress. Reports will be furnished to the SA as required. As a minimum, the records will contain:
  - a. Records showing receipt of all USDA Foods.
  - b. A perpetual storeroom inventory showing receipts, issues, contract numbers, and dates supporting these transactions; a separate record will be maintained for USDA Foods, whether stored on or off the premises.
  - c. Daily tabulation of meals served under this program, showing separate entries for:

- i. Eligible recipients;
  - ii. Staff;
  - iii. Other persons served;
  - iv. Totals for the month;
  - v. Totals for the year.
- d. A record showing an actual monthly physical inventory of USDA Foods on hand.
  - e. An accounting of all funds derived from the sale of empty USDA Foods containers.
  - f. Schools will keep daily records of meals served to children as per program requirements.

9. Representatives of the USDA and the SA may inspect USDA Foods in storage on school premises or the facilities used in the handling or storage of such USDA Foods and may inspect and audit all records, including financial records pertaining to foodservice in general, including financial records and reports pertaining to the USDA Foods, and may review or audit the procedures and methods used in carrying out the requirements of this agreement. Failure to maintain the required records may result in suspension and/or termination of this agreement immediately or enforce a period of suspension upon the RA when there is evidence of failure to comply with the terms of the agreement. The suspension shall remain in effect until a satisfactory determination has been made. Further evidence of failure to comply with any or all of the terms of this agreement may result in permanent suspension from the program. Subject to such notice of termination or cancellation of the agreement, the RA agrees to comply with the instructions of the SA either (a) to utilize, without waste, all remaining inventories of USDA Foods in accordance with the provisions of this agreement or (b) to return such USDA Foods to the SA to record the final disposition of such USDA Food inventories. All records pertaining to the USDA Foods program shall be retained for a period of not less than five years from the actual date of termination of the agreement. During this time, the RA is subject to audit by USDA and the SA representatives. Either Agency may terminate this agreement by giving the other party a 30-day notice in writing.

10. The RA agrees to keep all personnel handling the program (the one who signed the agreement, the person or persons authorized to sign offers and receipts for USDA Foods, and the person or persons handling the food service) adequately informed of the rules and regulations governing the program by making available to these persons a copy of the approved agreement in addition to all letters and circulars pertinent to the operation of the program. The RA further agrees to notify the SA of any changes in the personnel handling the program.

11. The RA agrees to inform the SA of any proposed changes in the type of food service management. If the services of an FSMC are to be employed, the SA shall be notified at once and furnished a copy of the proposed contract so that eligibility or continuance in the program can be determined.

12. No USDA Foods will be received from any other source except when prior approval has been received by the RA from the SA.

13. The RA agrees to accept charges incurred by the SA on behalf of the RA to cover costs of transportation, storage, handling, etc., of USDA Foods whenever such changes cannot be taken care of satisfactorily.

14. The RA hereby certifies that institutions, if private, are non-profit and exempt from Federal income tax under the Internal Revenue Code, as amended. The RA certifies that institutions are licensed as defined in 7CFR 210.2.

15. If the RA is a detention/correctional facility or reform school, the RA hereby agrees to provide rehabilitation/instructional programs that will prepare participants/detainees for return to general society. Activities considered rehabilitative are as follows:

- a. Academic courses at elementary, high school, college or postgraduate levels, including study release programs.
- b. Vocational education or training in formal courses or on-the-job training in trades.
- c. Employment experiences involving acquiring, maintaining, or improving trade or professional skills, including work release programs.
- d. Clinical or counseling services such as psychiatric therapy and psychological or other counseling, including religious/chaplaincy services.
- e. Health therapy treatment of physical handicaps, including drug or alcohol addiction, which may have contributed to a detainee breaking the law. The RA certifies that the instructions meet the above eligibility criteria and will provide a detailed description of the rehabilitative activities to the SA upon request.

16. Transfer of Title does not occur until the USDA Food is received and accepted by the RA on its premises or one of its contracted storage/distribution locations. This only allows the RA to utilize USDA Foods for its intended program purposes. If the Transfer of Title has occurred, the RA is not authorized to sell, trade, give away, or otherwise dispose of the USDA food without written approval from the SA.

17. RAs who have any meals prepared on site by a FSMC or have any meals prepared and delivered by a FSMC, food vendor or other authorized meal provider may elect to turn over some or all of its USDA Foods to the entity solely for use in the preparation of eligible meals as determined by the regulations of the applicable Food Distribution Program or Child Nutrition Program (NSLP, CACFP, SFSP) provided that all of the below conditions are met:

- a. Title of the USDA Foods is first transferred to the RA. Transfer of title means the RA physically has either received the USDA Foods in one or more of its facilities or USDA Foods are delivered to a warehouse or distributor which the RA has contracted with for storage and/or distribution of USDA Foods and commodity end products.
- b. The entity shall credit the RA for the full USDA value of all USDA Foods received during the program year, regardless of whether the full USDA value is returned to the RA in the form of meals or finished products to the school. The RA shall provide documentation upon request of all credits for the program year to date.
- c. The Value of USDA Foods will be determined by any of the following that apply:
  - i. If a direct-ship item, the final USDA purchase price is listed in the USDA Web-Based Supply Chain Management system (WBSCM).
  - ii. If a further processed end-product, the approved USDA Summary End Product Data Schedule (SEPDS) contract value of the USDA Food for the year the drawdown occurred.
  - iii. If a DoD FFVP item, the price listed on the DoD/USDA Fresh Fruits and Vegetables Order Receipt System (FFAVORS) Order/Receipt form for the period in which the delivery occurred.

d. If at the end of the contract period between the RA and the FSMC or if the contract is ended earlier by either party and there is a balance of USDA Food in the possession of the FSMC, the FSMC will, at the discretion of the RA either:

i. Return the balance of USDA Foods to the RA;

ii. Transfer the balance of USDA Foods to or allow the pickup from the RA's new FSMC or

iii. At the discretion of the SA, pay or credit the RA for the value of the remaining USDA Foods.

e. The RA shall include in any contract it enters into for storage and distribution of USDA Foods provisions to allow for inspections of the USDA Foods and facilities at reasonable times by the RA, the SA, and/or USDA representatives.

18. RA served by FSMCs which order USDA Foods at the request of their FSMC or which delegate ordering authority to their FSMC, from the SA perspective are still responsible for any such payment which may become due from any processor, distributor, or other storage or delivery service. The RA should have provisions in the agreement/contract with their FSMC to obligate the FSMC to either credit the RA or allow the FSMC to make any such payments directly for any Non-Entitlement Produce ordered. The FSMC should also be obligated to provide proof of any such credits or payments.

19. USDA 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 or persons deemed competent by the USDA, shall be disposed of in accordance with instructions of the USDA and/or the SA. Such instructions may direct that unfit donated food be:

a. Sold in a manner prescribed by the SA with the net proceeds thereof remitted to the SA;

b. Sold in a manner prescribed by the SA with the proceeds thereof retained for use in accordance with the provisions of § 7 CFR 250.15(f);

c. Used in such manner as will serve a useful purpose as determined by the SA; or

d. Destroyed in accordance with applicable sanitation laws and regulations.

20. The SA reserves the right to increase or decrease an RA's Federal Entitlement Allocation and/or USDA Food Allocation at any time based on past and current utilization to ensure that the allocations will be reasonably utilized in a given program year. An RA's underutilization of its allocations during a program year does not automatically entitle the RA to carry over and utilize the balance in the following program year.

21. The Food Distribution Program is a cashless Federal Entitlement program. This is not a grant program. The amount indicated in any estimated or actual Entitlement or PAL notice is not a guarantee that the value indicated will be received. The RA does not receive any benefit until the Transfer of Title of USDA Foods occurs. Therefore, the RA is responsible for reporting only the actual value of USDA Foods received to its respective authorities, auditors, etc. Nothing contained in this agreement shall prevent the State Agency from imposing additional regulations that are consistent with the intent of the program.

## **REQUIREMENTS FOR PARTICIPATION IN THE CHILD AND ADULT CARE FOOD PROGRAM**

The Child and Adult Care Food Program (CACFP) is a federal program that serves nutritious meals and snacks to eligible children and adults who are enrolled for care at participating child

care centers, daycare homes, and adult daycare centers. CACFP also provides meals and snacks to children and youth who participate in afterschool care programs or reside in emergency shelters.

CACFP sponsors may claim reimbursement for a maximum of either two meals and one snack or two snacks and one meal per participant per day. Meals claimed for reimbursement shall meet the CACFP meal pattern requirements and be served to enrolled participants in approved settings.

In order to carry out the purpose of Section 17 of the National School Lunch Act, as amended, and the Regulations governing the CACFP issued there under 7 CFR Part 226 (current regulations can be found at: <http://www.fns.usda.gov/cnd/Care/Regs-Policy/policy.htm>), the SA and the Institution, whose name and address appear above, agree as follows:

The Institution:

Represents and warrants that it will accept final administrative and financial responsibility for total CACFP operations at all homes, centers, at risk after-school programs, emergency shelters, or proprietary Title XIX and Title XX centers referenced in Section B.

Understands and agrees that any publications by the Institution may be freely copied by the SA or other institutions under the CACFP. Certifies as to the number of private for-profit adult care centers or child care centers under its auspices that received amounts granted to the State under Title XIX (adult centers) or Title XX (child care centers or adult care centers) of the Social Security Act for at least 25% of each center's enrolled participants or 25% of each center's licensed capacity (child care centers only) during the month preceding application to the program (or at those times authorized by the U.S. Congress, for child care centers only, 25% of each center's enrolled participants or 25% of each center's licensed capacity, are eligible for free or reduced-price school meals); and shall continue to certify and provide such information in each succeeding month. Proprietary institutions shall not claim reimbursement for meals served under the CACFP in any month for any proprietary centers that do not meet these criteria. If an institution is a for-profit sponsoring organization, it also certifies that all centers under this agreement have the same legal identity as the Institution. Institutions operating adult care centers shall not claim reimbursement for meals under the CACFP, which are also claimed under Title III.

The SA and the Institution mutually agree to comply with and meet all responsibilities and all policies, instructions, and procedures established by the SA in accordance with the CACFP regulations that:

Representatives of the Department and/or the Office of the Inspector General may make announced or unannounced reviews of their operations during the institution's normal hours of child or adult care operations, and that anyone doing such reviews shall show photo identification that demonstrates that they are employees of one of these entities.

The institution will be reimbursed under the following methods: child or adult care centers, outside-school hours care centers, at risk after school programs, emergency shelters: "claiming percentage or actual count." For sponsoring organizations of day care homes: according to the payment rates for administrative costs and according to the full food service payment rates.

General Conditions

1. This Agreement is non-transferable.
2. Neither the SA nor the Institution has an obligation to renew this Permanent Agreement.

## **CERTIFICATION STATEMENTS**

As part of this agreement, Institutions shall submit certifications regarding participation in other publicly funded programs. The required certification statements listed below shall be completed. Institutions and individuals providing false certifications will be placed on a National Disqualified List maintained by the U.S. Department of Agriculture (USDA) and will be subject to any other applicable civil or criminal penalties.

I CERTIFY that, within the last seven years, neither the institution nor any agency employee or board member has been convicted of a criminal offense and that no agency employee or board member has been associated with an organization terminated from CACFP for failure to correct serious deficiencies.

I CERTIFY that, during the last seven years, neither the institution nor any of its principals have been convicted of any activity that indicated a lack of business integrity. Activities that indicate a lack of business integrity include, but are not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims or obstruction of justice.

I CERTIFY that this institution has not been disqualified from participation in any other publicly funded program for violating that program's requirements. "Publicly-funded program" means any program or grant funded by Federal, State or local government.

I CERTIFY that the information on this application is true to the best of my knowledge, that I will accept final administrative and financial responsibility for total CACFP operations at all facilities under my sponsorship, and that reimbursement will only be claimed for meals served to enrolled participants at the approved food service facilities and that these facilities have the capability for the meal service planned for the number of participants anticipated to be served. I understand that this information is being given in connection with the receipt of Federal funds and that deliberate misrepresentation may subject me to prosecution under applicable State and Federal criminal statutes.

I FURTHER CERTIFY that all information submitted in any application and agreement is true and correct and that the institution and any/all sites that are associated with this institution understand that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

## **REQUIREMENTS FOR PARTICIPATION IN THE SUMMER FOOD SERVICE PROGRAM**

The SA and sponsor shall comply with all provisions of 7 CFR Parts 225 and 245 and the current policy issued by the USDA Food and Nutrition Service. The SA is required to provide training to sponsors and monitor sponsor operations in accordance with 225.7 and provide appeal rights in

accordance with 225.13. The Sponsor further agrees to the following specific provisions, as applicable:

1. To retain final financial and administrative responsibility for the Program.
2. To operate a nonprofit food service.
  - (i) From May through September for children on school vacation;
  - (ii) At any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or
  - (iii) During the period from October through April, if it serves an area affected by an unanticipated school closure due to a natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, a similar cause.
3. To serve meals that meet the requirements and provisions set forth in 7 CFR §225.16 during times designated as meal service periods by the sponsor.
4. To serve the same meals to all children.
5. To serve meals without cost to all children, except those camps, as defined in 7 CFR §225.2, may charge for meals served to children who are not served meals under the Program.
6. To Issue a free meal policy statement in accordance with 7 CFR §225.6.
7. To meet the training requirement for its administrative and site personnel as required under 7 CFR §225.15(d)(1).
8. To claim reimbursement only for the type(s) of meals specified in the agreement that are served without charge to children at approved sites, except camps and conditional non-congregate sites, during the approved meal service time; without charge to children who meet the Program's income standards in camps and conditional non-congregate sites; within the approved level for the maximum number of children's meals that may be served, if a maximum approved level is required under [paragraph \(h\)\(2\)](#) of this section; at the approved meal service time, unless a change is approved by the State agency, as required under [§ 225.16\(c\)](#); and at the approved site, unless the requirements in [§ 225.16\(g\)](#) are met. For approved congregate meal service, maintain children on site while meals are consumed. Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption if the requirements in [§ 225.16\(h\)](#) are met.
9. To submit claims for reimbursement as specified in 7 CFR §225.9.
10. In the storage, preparation, and service of food, proper sanitation and health standards shall be maintained in conformance with all applicable state and local laws and regulations.
11. To accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered under 7CFR Part 250 (Commodity Food Distribution Program).



12. To have access to facilities necessary for storing, preparing and serving food.
13. To maintain a financial management system as prescribed by the SA.
14. Upon request, to make all Program accounts and records available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place.
15. To maintain on file documentation of site visits and reviews in accordance with [§ 225.15\(d\)\(2\)](#) and [\(3\)](#). All program records must be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless the audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved.
16. To maintain children on-site while meals are consumed.

I FURTHER CERTIFY that all information submitted in any application and agreement is true and correct and that the institution and any/all sites that are associated with this institution understand that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

#### **ASSURANCE OF CIVIL RIGHTS COMPLIANCE**

The Sponsor hereby agrees to comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42, and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded

by USDA (not all bases apply to all programs).

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, grant, or donation of Federal property and interest 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 that 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 USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food and cash assistance for the 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 Sponsor agrees to compile data, maintain records, and submit records and reports as required to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Sponsor, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Sponsor.

#### **USDA NONDISCRIMINATION STATEMENT**

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible State or local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter shall contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter shall be submitted to USDA by:

(1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; or

(2) fax: (833) 256-1665 or (202) 690-7442; or

(3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.

Also, the District of Columbia Human Rights Act, approved December 13, 1977 (DC Law 2-38; DC Official Code §2-1402.11(2006), as amended), States the following: Pertinent section of DC Code § 2-1402.11:

It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially, for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any individual. To file a complaint alleging discrimination on one of these bases, please contact the District of Columbia's Office of Human Rights at (202) 727-3545.

Residential child care institutions which are not licensed to accept individuals with certain kinds of disabilities and, therefore, feel they are unable to make this statement may provide the State Agency with the following statement: