

**MASTER PROCESSING AGREEMENT
SCHOOL YEAR July 1, 2009—June 30, 2010**

Agreement is made by and between the following:

State Distributing Agency:

State	<u>Florida Department of Agriculture and Consumer Services</u>
Agency	<u>Bureau of Food Distribution</u>
Agency Contact	<u>Cathy Quick</u>
Address	<u>407 South Calhoun Street, 2nd Floor (M39)</u>
City, State, Zip Code	<u>Tallahassee, Florida 32399-0800</u>
Telephone	<u>(850) 487-6694</u>
Fax	<u>(850) 488-6961</u>
E-Mail	<u>quickc@doacs.state.fl.us</u>

and the following processing (Processor) company:

Company Name	_____
Company Representative	_____
Address	_____
City, State, Zip Code	_____
Contact Person	_____
Telephone	_____
Fax	_____
E-Mail	_____
Commodity (ies) Processed:	_____

and is made with respect to the following facts:

The United States Department of Agriculture (USDA) has made commodity foods available to the State Distributing Agency (DA) for distribution to eligible Recipient Agencies (RA), using the following DF, as identified on attached End Product Data Schedules.

The DA is desirous of arranging with the Processor for the production of end product(s) as described on the attached End Product Data Schedule(s) at the following Processor's plant location(s):

<u>Plant Name</u>	<u>Street, City, State, Zip</u>	<u>Contact Person</u>	<u>Phone #</u>	<u>Fax #</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(For additional plants, add an attachment)

This Agreement is governed by the current and applicable sections of Title 7 Code of Federal Regulations, Parts 210 and 250, and any subsequent changes are also included as part of this Agreement.

If any of the above information changes during the **July 1, 2009 — June 30, 2010** school year, please inform the state agency as soon as possible.

In consideration of the terms and conditions contained within this Agreement, the parties agree as follows:

1. **AGREEMENT INTENT**

This Agreement sets forth the contractual obligations under which the Processor may utilize DF to manufacture and deliver specified end product(s) to eligible RA's to ensure the return of quantity, quality and value of such DF.

2. **CATEGORIES OF COMMODITY FOODS IN PROCESSING**

The Processor shall adhere to the processing and handling procedures applicable to the category of DF to be processed under this Agreement as defined below:

A. **Fully Substitutable Commodity Foods** - Such DF may be substituted, interchanged, or commingled in storage and production with a commercial food of the same generic identity and of equal or better quality in compliance with 7CFR 250.30(f)(1) and (2).

- 1) The Processor shall maintain documentation that the commercial food interchanged, commingled, or substituted for the DF is:
 - a. Of U.S. origin; and
 - b. Identical or superior to the DF specification as evidenced by certification performed by, or acceptable to, the applicable federal acceptance service.
- 2) The Processor may utilize substitutable DF in the manufacture of end product sold commercially, but shall not otherwise sell or dispose of the DF in bulk form. Should the Processor elect to utilize a commercial food in anticipation of replacement with DF, the RA or DA cannot guarantee such replacement and assumes no liability for such replacement.
- 3) The Processor must be able to demonstrate that purchases of commercial foods are sufficient to meet commercial production needs.
- 4) If use of concentrated skim milk to replace commodity nonfat dry milk is approved by the DA, the Processor must comply with 7CFR Part 250.30 (f)(3).

B. **Limited Substitutable Commodity Foods** - 7CFR Part 250.30 (f) allows substitution of commercial bulk pack poultry parts for USDA commodity bulk pack poultry and poultry parts.

- 1) Limited substitution is an option available to processor, not a mandatory practice. Participating in limited substitution requires the processor to submit and obtain FNS and AMS approval of a poultry substitution plan.
- 2) Restrictions include, but are not limited to, prohibition against substitution of backhauled commodity product.
- 3) Substitution of commercial poultry or poultry parts for the commodity poultry or poultry parts must be performed using poultry of U. S. origin that is equal or superior to the USDA specification for commodity poultry.
- 4) Poultry processors must indicate in **Article 35** of this contract the option under which they are processing poultry.
- 5) If a processor opts not to adopt the limited substitution option for poultry, the processor shall meet all provisions stipulated for nonsubstitutable commodities.

C. **Nonsubstitutable Commodity Foods** - Commodity beef or pork shall not be interchanged, commingled or substituted with a commercial food that could be used in place of the DF in the product formulation, unless otherwise specified in **Article 35**.

The processor shall store such DF apart from all commercial foods and process them apart from regular commercial production. The Processor shall return all products produced above guaranteed minimum return on the EPDS. If actual yield falls below the guaranteed return, the Processor shall make up the difference between actual and guaranteed return by either:

- 1) Utilizing commercial food that is of U.S. origin and identical or superior to the DF specification as evidenced by certification performed by, or acceptable to, the applicable federal acceptance service. A USDA certificate must be obtained to certify the quality of replacement beef and pork; or
- 2) Reimbursing the RA or DA the value of DF that would have been used to produce the end product.

3. **PROCESSING ARRANGEMENTS**

The Processor shall maintain delivery and/or billing invoices, refund applications, canceled checks or other documentation as applicable, to substantiate that proper value pass through occurred or the proper fee for service was charged.

Arrangements for processing DF into various end products will be based on one of the following:

A. **Commodity Food Value Pass-Through System**

The processing of DF is incorporated into the Processor's normal manner of business, including production, pricing, and delivery of the end product. The specific value of DF shall be established based on the designated USDA value. The Processor shall ensure that the full value of the DF contained in the end product shall be passed on to the eligible purchasing RA. The dollar pass-through value of the DF contained in the end product shall be provided to the RA either by the DA or the processor at the option of the DA. With the concurrence of the DA, the Processor shall select one of the following value pass-through systems in Article 37 of this Agreement. The DA reserves the right to disallow continued use of a value pass-through system if poor performance is indicated.

1) Direct Sales

a. Discount System

The Processor shall invoice the RA at the net case price, which shall reflect a discount for the value of the DF established in this Agreement. Only when the end product has been delivered to the RA or the RA's designee may DF inventory be reduced.

b. Refund System

The processor shall invoice the RA at the commercial/gross price of the end product. Refunds that reflect the value of the DF contained in the end products shall be made to the RA upon proof of purchase. Refund payments shall be initiated or paid as follows:

- (1) The RA shall submit a refund application to the Processor within 30 days from the end of the month of the date of delivery. RA's may submit refund applications to the processor on a quarterly basis if the total refund due is \$25 or less during the quarter.
- (2) Within 30 days of the receipt of the refund application, the Processor shall compute the amount and issue payment of refund directly to the RA. Processors may issue payment of refunds on a quarterly basis if the total payment due to that RA is \$25 or less during the quarter. Sales cannot be reported and the inventory cannot be reduced until refunds are actually issued.
- (3) Copies of the refund application and payment to the RA's shall be forwarded to the appropriate DA by the Processor with the monthly performance report.

2) Indirect Sales

a. Discount System (Hybrid System)

The Processor shall sell to the distributor at the commercial/gross price. The distributor will invoice the RA at the net case price plus the distributor's markup. The net case price shall reflect a discount equal to the full value of the DF established in this Agreement. The distributor shall apply for a refund or credit from the Processor for the full value of the DF. Sales verification is required for this pass-through system. (See Article 4.)

b. Refund System

The Processor shall sell to the distributor at the commercial/gross price. The distributor will invoice the RA this price plus the distributor's markup. Refunds shall be made to the RA by the Processor that reflect the value of the DF contained in the end products upon receipt of the refund application. The refund payment shall be initiated and paid the same as listed above in paragraph 1) b. 1 through 3.

3) Other Value Pass-Through Systems

Processors are permitted to use alternate value pass-through systems if approved by the DA and FNS. These systems must comply with the sales verification requirements outlined in 7 CFR 250.19 (b)(2) or an alternate verification system as approved by the DA and FNS.

B. Fee-For-Service System

A "fee-for-service" system is a price by pound or by case representing a Processor's cost of ingredients (other than the DF), labor, packaging, overhead, and other costs incurred in the conversion of the DF into the specified end product. A discount or refund per case is not established; consequently there is not credit for the value of DF. The net price is based on the charge per pound or per case for processed finished product. End products produced under fee-for-service Agreements may be delivered and invoiced to the RA in one of the following ways:

- 1) The Processor delivers the end products directly to the RA or RA's designee and bills the RA for the agreed upon fee for service.
- 2) Delivery is made by commercial distributors. The Processor shall not sell end products directly to the distributor. Two options for arranging payment for end products are:
 - a. A dual billing system whereby the RA is billed by the Processor for the fee for service and the distributor bills the RA for storage and delivery of end products; or
 - b. The Processor arranges for the delivery with a distributor for the RA. The Processor's invoice must include both the processing fee and the distributor's charges as separate identifiable charges.
 - c. Processor arranges for delivery and billing by a distributor in accordance with FD-025: Fee for Service Billing Methods Through a Distributor. Processor retains financial obligations for sales to ineligible recipients. The distributor never assumes this obligation as the Processing Agreement is between the Processor and DA.

4. PROCESSOR SALES VERIFICATION

If delegated by the DA for discount sales made by distributors the Processor shall verify sales conducted under the terms of Article 3.A.2. and 3.A.3. Verification shall include a statistically valid sample of reported sales in a manner, which ensures a 95 percent confidence level. All sales reported during a specific period shall be verified at least semiannually. The Processor shall verify that sales were made only to eligible RA's and that the value of the DF was passed through to the RA's. Sales verification findings shall be reported as an attachment to the December and June performance reports in a format approved by the DA. At the same time this report is submitted, the Processor shall submit to the DA a corrective action plan designed

to correct problems identified in the verification effort. This plan will be subject to the DA approval. The DA may assess a claim against the Processor if, after review, it is determined that the value of the DF has not been passed on to the RAs or if the end products were improperly distributed.

5. **END PRODUCT DATA SCHEDULE**

The End Product Data Schedule (EPDS), Summary End Product Data Schedule (SEPDS) and all related instructions are an integral part of this Agreement. The Processor agrees to the effective date established by the DA on the SEPDS for the item(s) listed thereon and the Processor shall not be permitted to reduce inventory for any end products which were sold prior to the effective date so established.

Changes in End Product formulation or return must be reflected on new or replacement EPDS or SEPDS and submitted for approval.

Specific details are contained in the EPDS instructions. The following information will be included:

- A. End Product Description
- B. Product Formulation
- C. End Product Return

Specific details are continued in the SEPDS instruction. The following information will be included:

- A. Selected Data from EPDS
- B. Contract Value of Commodity
- C. Pricing Structure of End Product

Any credits (i.e., buyback parts and by-products such as bones, broth, etc.) must be listed separately on the SEPDS.

6. **PACKAGING**

The Processor shall package all end products in accordance with acceptable standards within the Processor's industry and in conformity with Federal and State requirements, which may be applicable during the period of this agreement. Damaged cases may be rejected at no cost to the DA or the RA.

7. **LABELING**

The Processor shall label the end product container in accordance with applicable federal labeling requirements. In addition, the Processor shall adhere to the following label requirements:

- A. The exterior shipping container, and where practical the individual wrappings or containers within the exterior container, of end product containing nonsubstitutable DF as defined in Article 2.C shall have clearly shown on the label the legend "**Contains Commodities by the United States (U.S.) Department of Agriculture. This product shall be sold only to eligible Recipient Agencies.**"
- B. The Processor shall obtain approval through procedures established by FNS in conjunction with the Food Safety Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, and National Marine Fisheries Service of the U.S. Department of Commerce, or other applicable federal agency for all labels which make any claim with regard to an end product's contribution toward meal requirements of any Child Nutrition Program.
- C. The Processor may be required to obtain a Child Nutrition (CN) label for all end products containing meat, poultry, fish or a meat alternate such as cheese or peanut butter. If a CN label is required and requested in Article 35 the processor must: (1) submit a copy of the approved CN label to the DA prior to requesting the DA to order DF or picking up DF from RA; and (2) affix the CN label to each case of end product to be sold to eligible RAs.

8. **QUALITY CONTROL (QC)**

As an attachment to this Agreement, the Processor shall provide a written description of the Processor's QC system to the DA. By signing this Agreement, the Processor assures that an effective QC system will be maintained for the duration of this Agreement.

- A. The Processor shall transport DF picked up from the DA or the RA; receive, handle, store and deliver end product in a safe and sanitary manner and at the recommended temperature for the specific DF and end product covered by this Agreement.
- B. The Processor, with the concurrence of the DA and USDA, may refuse a delivery of DF directly to the Processor's plant or to his authorized storage agent, which does not meet the federal specifications under which it was purchased and shipped.
- C. All end product produced under this Agreement shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which the Processor's plant is located or by the applicable federal standards, whichever are higher.
- D. At the option of the DA, samples may be pulled from delivered end product for laboratory testing. The Processor shall pay costs of such tests only if product sample tested fails to meet either Agreement specifications or quality and wholesomeness standards.
- E. The Processor shall maintain end product batch identification in the event end product is rejected upon delivery. End product failing to meet Agreement specifications or wholesomeness standards shall be rejected by the DA and the Processor so notified. The Processor shall be given fifteen calendar days from this notice of rejection to negotiate removal of rejected product and replacement of an acceptable end product. If agreement is not reached, the DA or purchasing RA shall have the right to purchase the same or similar product on the open market at the Processor's expense. If agreement is not reached, the DA is to arrange removal of rejected product. The DA shall proceed to authorize removal and destruction at Processor's expense.

9. **INSPECTION AND GRADING REQUIREMENTS FOR PROCESSING**

The Processor shall be required to provide inspection and/or acceptance and certification as follows:

- A. **Continuous Wholesomeness Inspection** – When commodity meat or poultry products are processed or when commercial meat or poultry products are incorporated into an end product containing one or more DF, all processing shall be performed in plants under continuous inspection by FSIS personnel, or State meat and poultry inspection personnel in those states certified to have programs at least equal to the federal inspection program.
- B. **Acceptance Service Grading** - All commodity meat and poultry nonsubstitutable and limited substitutable processing shall be performed under AMS certification. All commercial products bearing an item code identical to the commodity item code must be produced under AMS certification. Under no circumstances shall the Processor set up production runs for the purpose of circumventing this requirement.
 - 1) The cost of this service shall be borne by the processor.
 - 2) Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the Processor can demonstrate:
 - a. That even with ample notification the Processor cannot secure the services of a grader;
 - b. That the cost for a grader is unduly excessive, as determined per order by the DA, relative to the value of food being processed and that production runs cannot be combined or scheduled to enable prorating of the cost of services among the purchasers of end products; or
 - c. That the documented urgency of the RA's need for the end product precludes the use of acceptance services

- d. There shall be no blanket exemptions. The DA reserves the right to verify the Processor's claim for exemption.
- 3) Copies of all certification forms issued by AMS graders for commodity meat or poultry processing shall be provided to the DA with the monthly performance report.
- 4) At the option of the DA, and as detailed in Article 35 of this Agreement, other DF may be required to be processed under the applicable federal acceptance service including the certification that a commercial food authorized to be substituted for a DF is identical or superior to the DF specifications.

10. **RESERVED**

11. **COMMODITY FOOD CONTAINERS**

The Processor shall return to the DA or RA for which the DF was processed, all funds received from the sale of DF containers. Refund of such funds shall, at the option of the DA, be in the form of a cash payment or applied as credit. If credit is selected, it must be clearly identified on the invoice. If the containers are sold for commercial reuse, all USDA restrictive legends or markings shall be completely and permanently obliterated or removed by the Processor prior to resale.

12. **BY-PRODUCTS OF COMMODITY FOOD PROCESSING**

Salvageable material, not utilized in the end products, that is produced or derived from manufacturing processes employed in the processing of DF, shall be disposed of in such a manner as to realize the greatest value possible for the material. Such material shall, with the concurrence of the DA, be handled as follows:

- A. The by-product, if agreeable to the RA for which the DF was processed, shall be accumulated and returned in a sanitary and wholesome manner to the RA; or
- B. At the option of the DA the Processor shall return to the DA or RA for which the DF was processed all funds received from the sale of salvageable by-product material. Return of such funds shall at the option of the DA be in the form of a cash payment or a reduction in the selling price of the end product based on the following:
 - 1) The actual value received from the sale of the by-product by the Processor
 - 2) The fair market value of the by-product at the time it is further processed or refined by the Processor.
- C. Special handling instructions and dispositions of any by-product shall be detailed in **Article 35** of this Agreement.

13. **TRANSFERS OF USDA COMMODITY FOODS**

Commodity Foods (DF) may be transferred only between DA's or RA's with the concurrence of the DA and FNS if applicable. All transfers of DF shall be documented. Such documentation shall be maintained in accordance with Article 16. C.

14. **INVENTORY REDUCTIONS**

A. **Fully Substitutable Commodity Foods**

For all end products utilizing a substitutable DF, the amount of DF actually contained in the end product as identified in the EPDS shall be the only basis for inventory reduction on the monthly performance report. The reduction in inventory can be shown only after there has been pass through to the RA of the value of the DF.

B. **Nonsubstitutable and Limited Substitutable Commodity Foods**

For all end products utilizing nonsubstitutable or limited substitution DF inventory reductions to monthly performance reports shall be made based on the actual amount of DF used to produce the end product. The finished goods inventory may be reduced only upon delivery to eligible RA or RA designee.

15. **PERFORMANCE REPORTING**

The Processor shall submit monthly reports pertaining to performance under this Agreement to the DA postmarked or transmitted electronically no later than 30 days after the close of the reporting period. **If no activity took place during the reporting month, a performance report shall be submitted to reflect no activity.** Negative inventory shall be reported on monthly reports i.e. negative inventory resulting from sales of end products containing substituted commercially purchased foods meeting the standards specified in Article 2. If sales are made using a refund system, the sales cannot be reported and inventory cannot be reduced until a refund is actually issued.

The DA will monitor Processors to ensure that the quantity of DF on hand does not exceed a six-month supply based on the Processor's average monthly usage.

If sales verification on discount sales is delegated to the Processor findings shall be reported as an attachment to the December and June performance reports in a format approved by the DA.

Processors failing to submit monthly performance reports within the established time limits will be considered in noncompliance with this Agreement and this may result in Agreement termination by the DA.

Monthly performance reports shall be submitted only in a DA approved format, which shall include:

- A. A List of RAs by name and code number (if applicable) purchasing end products under this Agreement;
- B. DF inventory at the beginning of the reporting period;
- C. Total quantity of DF received during the reporting period specifying the sources of such DF such as backhaul from the DA or RA, direct shipments arranged by the DA, and/or transfers into the DA's or RA's account and year to date totals;
- D. Total number of units/cases of approved end products by product identification code or brand name delivered to each eligible RA during the reporting period for which the RA has received a discount or refund;
- E. Total number of pounds of DF reduced from inventory and year to date totals
- F. DF inventory at the end of the reporting period;
- G. A certification statement that sufficient DF is in inventory or on order to account for quantities needed for production of end product for State processing contracts and that the Processor has on hand or on order adequate quantities of foods purchased commercially to meet the Processor's production requirements for commercial sales.

16. **ACCOUNTABILITY AND RECORDS**

The Processor shall fully account for all DF delivered or carried forward from a previous contract year into its possession by the production and delivery of an appropriate number of end products specified in this Agreement to eligible RA's. Commodity Food or the value thereof not so accounted for shall be the liability of the Processor. All records and documents to substantiate information provided on reports shall be maintained on file for a period of three years from the close of the federal fiscal year to which they pertain unless longer retention is required for resolution of an audit, litigation, or State law (refer to Article 35). Accountability records shall include but not be limited to the following:

A. **Production Records** - Processor is obligated to meet DF usage in production stated on the EPDS and shall be liable for shortages and overages between that stated usage per case of end product and the actual usage per case of end product. Production records shall include:

- 1) Daily or batch production records to substantiate actual DF or substituted commercial ingredient usage per case of end product. At a minimum such records shall consist of end product formulation or batch recipes; production dates, batch identification and/or periods of production; quantity of DF or substituted commercial food placed into production for the period; and quantity of end product produced during the same period of production.
- 2) Quality control records as required by Article 8, end product labeling and any in-plant quality control records used to assure proper formulation, packaging, net weight, bacteriological safety, and other controls to assure end product quality and wholesomeness.
- 3) Grading certificates and reports for meat and poultry issued on incoming DF or substituted commercial food; during formulation and production of the end product; and on the outgoing end product by the applicable federal acceptance service.
- 4) Authorization letters from the DA waiving federal acceptance service requirements for a specific production run.

B. **Perpetual Inventory of Commodity Food** – The Processor shall maintain accurate and complete records with respect to receipt, usage, disposition, inventory of DF, load out check sheets, bills of lading, signed delivery tickets, and any other shipping and receiving documents to substantiate delivery of DF or substituted commercial food in the end product to the DA or their authorized agent.

C. **Other Records**

- 1) Quality of Commercial Food. Refer to Article 2.A.1.
- 2) Documentation of Value Pass-through or Fee for Service. Refer to Article 3.
- 3) Processor Sales Verification. Refer to Article 4.
- 4) Transfers of DF. Refer to Article 13.
- 5) Performance Reports. Refer to Article 15.

17. **AUDITS**

A. **CPA Audits**

Any Processor which meets the definition of a multi-state Processor as defined in 7 CFR Part 250.3 is subject to the following audit requirements.

- 1) Multistate Processors, which receive more than \$250,000 each year in DF, shall obtain an independent CPA audit for that year. Multi-state Processors which receive \$75,000 to \$250,000 in DF each year shall obtain an independent CPA audit every two years. Those, which receive less than \$75,000 in DF, each year, shall obtain an independent CPA audit every three years. The costs of the audits including those costs associated with training shall be borne by the processors. All audit requirements are to be met as stipulated in Section 7 CFR Part 250.18. For audit purposes, the total value of the DF received shall be computed by adding the value of food received under all states commodity processing programs.
- 2) Noncompliance with this audit requirement shall render the Processor ineligible to renew or enter into another Agreement with any contracting agency until the required audit has been conducted and deficiencies corrected.

B. **Right of Review and Audit**

Representative of the DA, USDA and General Accounting Office shall have the right to inspect the DF and substituted commercial food in the possession of the Processor; the facilities used in handling, storing, processing, and transporting; methods and procedures used by the Processor and/or his agent in carrying out the requirements of this Agreement; and all records and substantiating documentation required by this Agreement, during the Processor's normal working hours. When requested, the Processor shall furnish such representatives with samples of end product taken from a production run for testing.

18. **LIABILITY FOR COMMODITY FOODS**

The Processor shall be financially liable for the value of all DF in inventory. Any reduction in financial liability can only be accomplished by inventory reductions as permitted and documented under Articles 3, 13, 14, and 16.

A. **Substitutable Commodity Foods**

The Processor shall replace any unaccounted for, loss of, damage to, or improper use of, DF while in possession of the Processor with commercial food in compliance with Article 2.A.1.

The Processor shall be liable for replacement or payment for any DF, whether it is book or physical, in the event a claim is placed by the DA.

B. **Nonsubstitutable and Limited Substitutable Commodity Foods**

The Processor shall be responsible for loss of, damage to, or improper use of DF prior to delivery to the RA or RA's designee. Losses shall be promptly reported to the DA with a complete explanation of the circumstances. Any claim action for the DF shall be determined by the DA. If a claim is required, the Processor shall, at the option of the DA:

- 1) Replace the DF with an equal quantity of like in kind commercial food that is identical or superior to the DF specifications as required under Article 2.A.1. or
- 2) Pay the DA an amount equal to USDA's most recent per pound cost information on acquiring and delivering replacement food, relative to the time of the inability to account for loss of, damage to, or improper use of the DF, or the current per pound value established by this Agreement.

19. **INVENTORY PROTECTION**

Processor shall furnish to the DA a surety bond obtained only from a surety company listed in the Department of Treasury Circular 570, Surety Companies Acceptable on Federal Bonds, an irrevocable letter of credit, or an escrow account. Such bond, letter of credit, or escrow account shall be made payable to the DA. The bond shall guarantee that the processor shall faithfully account for, return, or pay for all of the DF received or carried forward, in accordance with this Agreement.

Inventory protection is required by the DA prior to the delivery of DF to the processor. The minimum amount of the bond, letter of credit or escrow account, shall be determined by: value of the DF on hand and on order minus anticipated usage rate during the Agreement period. The bond shall remain in effect until all commodity food is properly accounted for, paid for or returned in accordance with this Agreement. Liability for loss is provided in Article 18 of this Agreement.

20. **AGREEMENT TERMINATION**

This Agreement may be terminated immediately at the option of the DA for noncompliance of its terms and conditions by the Processor or if any right in favor of the DA is threatened or jeopardized by the Processor and/or his agent. This Agreement may be terminated by either party upon 30 days written notice to the other. Disposition of DF inventory with the Processor or payment of value thereof shall be based on the following:

- A. When this Agreement is terminated or not renewed the Processor at the option of the DA regarding nonsubstitutable DF shall:

- 1) Return the DF to the DA; or
- 2) Pay the DA an amount equal to USDA's most recent cost information on acquiring and delivering replacement food relative to the time of termination; or
- 3) Pay the DA current per pound value established by this Agreement; or
- 4) Pay the Commodity Credit Corporation (CCC) unrestricted sales price.

B. When this Agreement is terminated or not renewed the Processor at the option of the DA regarding substitutable DF shall:

- 1) Return the DF to the DA to a destination designated by the DA at Processor's expense; or,
- 2) Replace the DF with commercial foods of identical or superior to quality as certified in accordance with Article 2 of this Agreement and deliver such foods to the DA to a destination designated by the DA at the Processor's expense; or,
- 3) Pay the DA for the DF based on USDA's most recent cost information on acquiring and delivering replacement made relative to the time of termination; or,
- 4) Pay the DA for the DF based on the current per pound value established by this Agreement; or,
- 5) When feasible and with the concurrence of any affected DA with which the Processor has an agreement transfer all DF inventory of the DA to the account of the affected DA or,
- 6) Pay the CCC unrestricted sales price.

21. **ASSIGNMENT/DELEGATION OF RESPONSIBILITIES**

The Processor shall not assign and/or delegate any of the duties and/or responsibilities to process DF under this Agreement to any party either by way of subcontract or any other arrangement without the prior written consent of the DA. If a subcontract is approved, the Processor remains responsible as prime contractor to ensure that DF is accounted for and processed according to the terms and conditions contained in this Agreement and is obligated to inform the subcontractor of these requirements. A subcontractor Agreement (Addendum No. 1) must be filled out for each contractor and included with this Agreement when submitted for approval. The Primary Processor and Subcontractor must sign the subcontractor Agreement.

22. **SOURCES OF COMMODITY FOOD FOR PROCESSING**

The Processor may acquire DF for processing under this Agreement from one or more of the following sources:

- A. Direct shipment of DF to the Processor's plant as ordered by the DA. Such orders should be mutually agreed upon between the processor and the DA in consideration of inventory status and estimated deliveries of end product.
- B. Transfer from other States with which the Processor has an Agreement and as authorized by both states.
- C. Backhaul from the RA's and/or DA's inventory.

All quantities of DF and sources must be entered as DF received on the monthly performance report required in Article 15. of this Agreement Approval of this Agreement by the DA shall not obligate the DA or USDA to deliver DF for processing.

23. **DEMURRAGE AND DETENTION**

The Processor shall be responsible for all demurrage and detention charges on shipments of DF placed for unloading at the Processor's plant that have been ordered for delivery as mutually agreed unless other payment arrangements have been mutually agreed upon between the Processor and the DA. The DA should make every effort to ensure that the Processor is notified of shipment of DF destined for the Processor's plant as soon as possible to assist the Processor in coordination of receiving, purchasing, production, and unloading.

24. **INDEMNITY/HOLD HARMLESS**

The Processor will indemnify and hold the DA and the RA free and harmless from any claims, damages, judgments, expenses, attorney's fees and compensations arising out of physical injury, death, and/or property damage sustained or alleged to have been sustained in whole or in part, by any and all persons whatsoever as a result of or arising out of any act or omission of the Processor, his/her agents or employees, or caused or resulting from any deleterious substance in any of the products produced from DF for which the Processor is responsible.

25. **INSURANCE**

The Processor must maintain adequate coverage for all insurable losses.

26. **ASSURANCE OF CIVIL RIGHTS COMPLIANCE AND EMPLOYMENT**

The Processor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d et seq.) all provisions required by the implementing regulations of Department of Agriculture, Department of Justice Enforcement Guidelines, FNS directives and guidelines to the effect that no person on the grounds of race, color, national origin, sex, age or handicap shall be excluded from participation in be denied the benefits of or otherwise be subject to discrimination under any activity carried out under this Agreement. In addition, the Processor agrees not to discriminate on the basis of race, color, national origin, sex, age or handicap among eligible RAs in the merchandising and sale of end products containing DF. This assurance is given in consideration of and for the purposes of obtaining permission to use federal property or interest in such property without consideration or at a nominal consideration. This assurance is binding on the Processor its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from FNS. The Processor shall comply with all applicable Federal, State and Local laws and regulations pertaining to wages hours and conditions of employment.

27. **UNLAWFUL BENEFITS**

No employees and/or agent(s) of any party to this Agreement, DA's office or any RA for which processing under this Agreement has been approved, shall be admitted to or may accept any share or part of this Agreement or to any benefit that may arise there from.

28. **AGREEMENT ENTIRETY**

This Agreement including the attachments contains the entire understanding between the parties hereto relating to the matters covered hereunder. All prior negotiations, representations, understandings and/or stipulations are conclusively superseded hereby and no other agreement or promise made by any party hereto, or by any of their agent(s), which is not contained in this Agreement, shall be binding or valid.

29. **MODIFICATION/AMENDMENT OF AGREEMENT**

This Agreement and Addendum A shall not be modified, amended, altered, or changed except by a written agreement signed by the parties hereto. If written agreement is obtained for changes in end product formulation, return of DF, or net case cost, the Processor shall not implement changes until written approval is received from the DA.

30. **SERVING OF NOTICES**

Any notice, demand or communication under or in connection with this Agreement may be served upon the other party by personal service, or by mailing the same by registered or certified mail, postage prepaid and addressed to the designated representative of such party at the address set out in this Agreement. Any such notice or demand shall be deemed served at the time of personal service or within 48 hours after the posting of the notice in the United States mail. Either party may change such designated representatives or mailing address by written notification to the other party.

31. **LEGAL RESOLUTION**

The Processor agrees that in performance of this Agreement to obey, abide, and comply with all applicable local state, and federal laws and regulations. This Agreement shall be governed and construed and the rights and obligations of parties hereto shall be determined in accordance with the laws of the State, which the DA represents. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

32. **DISTRIBUTION OF COPIES**

All parties to this Agreement shall retain a copy of the signed Agreement and Addendum for their records. Copies may be provided to any person upon request as public records under the applicable federal or state Freedom of Information laws.

33. **ELIGIBLE RECIPIENT AGENCIES**

Upon approval of this Agreement, the DA agrees to provide the Processor with a listing of all eligible RA's with appropriate identification numbers, if applicable, and addresses. The Processor can reduce inventory only upon delivery of approved end products to these eligible RA's.

34. **DEBARMENT**

Certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants Responsibilities. The regulations were published as Part IV of the January 30, 1989. Federal Register (pages 4722-4733).

By signing this agreement, the prospective lower tier participant (Processor) agrees it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

35. **SPECIAL PROVISIONS**

In addition to the forgoing provisions, the Processor agrees to the following terms and conditions required by the DA, local and State Laws:

- A. The Contractor acknowledges and agrees that this contract is conditioned upon and subject to the receipt and availability of federal funds by the Department of Agriculture and Consumer Services. Otherwise this agreement shall be null and void.
- B. Availability of Donated Foods. The negotiation of a Donated Food Processing Agreement in no way constitutes a commitment that any donated foods will be shipped to the Processors. Neither the USDA nor the State Distributing Agency can guarantee that any donated foods will be available for processing. Donated foods are made available depending upon the USDA's ability to purchase and acquire such items. Donated food processing agreements simply assure that in the event donated foods are shipped to the processor, the value of those foods will be discounted or refunded in the price of the end products sold to RAs under those agreements in relation to the amount of those foods contained in the end products.
- C. See Attachment I.
- D. The six digit Department of Management Services' class/group code commodity catalog control number is: 372 320.

- E. The Department of Agriculture and Consumer Services shall have the right of unilateral cancellation for refusal by the Contractor to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Article I of the State Constitution and s. 119.07(1), Florida Statutes.
- F. It is mutually understood and agreed that this contract is:
- 1) Subject to the provisions of Section 287.058, Florida Statutes, and the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature as provided in Section 287.0582, Florida Statutes.
 - 2) Subject to the approval of the State Chief Financial Officer (Department of Financial Services).
- G. It is mutually understood and agreed that if this contract disburses grants and aids appropriations, it is:
- 1) Subject to the requirements of Section 216.347, Florida Statutes, a state agency, a water management district, or the judicial branch may not authorize or make any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
 - 2) The following provisions of A through H are not applicable to procurement contracts used to buy goods or services from vendors, but are only applicable to a contractor subject to the Florida Single Audit Act.
 - a. There are uniform state audit requirements for state financial assistance provided by state agencies to Nonstate entities to carry out state projects in accordance with and subject to requirements of Section 215.97, Florida Statutes (F.S.), which may be applicable to and binding upon Recipient. Nonstate entity means a local governmental entity, nonprofit organization, or for-profit organization that receives state resources. Recipient means a Nonstate entity that receives state financial assistance directly from a state awarding agency.
 - b. In the event that the Recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such Recipient, the Recipient must have a state single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit I to this agreement indicates state financial assistance awarded through this Department resource by this agreement. In determining the state financial assistance expended in its fiscal year, the Recipient shall consider all sources of state financial assistance, including state financial assistance received from this Department resource, other state agencies, and other Nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a Nonstate entity for Federal program matching requirements.
 - c. Audits conducted pursuant to Section 215.97, F.S., shall be: (1) performed annually, and (2) conducted by independent auditors in accordance with auditing standards as stated in Chapters 10.555 (National School Lunch Program) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

- d. Regardless of the amount of the state financial assistance, the provisions of Section 215.97, F.S., do not exempt a Nonstate entity from compliance with provisions of law relating to maintaining records concerning state financial assistance to such Nonstate entity or allowing access and examination of those records by the state awarding agency, the Chief Financial Officer, or the Auditor General.
- e. If the Recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. If the Nonstate entity does not meet the threshold requiring the state single audit, such Nonstate entity must meet terms and conditions specified in this written agreement with the state awarding agency. In the event that the Recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provision of Section 215.97, F.S., the cost of the audit must be paid from the Nonstate entity's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than state entities).
- f. Each state awarding agency shall:
 - (1) Provide to a Recipient, information needed by the Recipient to comply with the requirements of Section 215.97, F.S.
 - (2) Require the Recipient, as a condition of receiving state financial assistance, to allow the state awarding agency, the Chief Financial Officer, and the Auditor General access to the Recipient's records and the Recipient's independent auditor's working papers as necessary for complying with the requirements of Section 215.97, F.S. The Recipient is required to maintain sufficient records demonstrating its compliance with the terms of this agreement for a period of three years from the date the audit report is issued, and shall allow the Department of Agriculture and Consumer Services or its designee, access to such records upon request.
 - (3) Notify the Recipient that Section 215.97, F.S., does not limit the authority of the state awarding agency to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency Inspector General, the Auditor General, or any other state official.
 - (4) Be provided by Recipient one copy of each financial reporting package prepared in accordance with the requirements of Section 215.97, F.S. The financial reporting package means the Nonstate entities' financial statements, Schedule of State Financial Assistance, auditor's reports, management letter, auditee's written responses or corrective action plan, correspondence on follow-up of prior years' corrective actions taken, and such other information determined by the Auditor General to be necessary and consistent with the purposes of Section 215.97, F.S. Copies of the financial reporting package required by this agreement shall be submitted by or on behalf of the Recipient directly to each of the following:
 - (a) The Department of Agriculture and Consumer Services
Division of Administration
509 Mayo Building
407 South Calhoun Street
Tallahassee, Florida 32399-0800

(b) The Auditor General's Office at the following address:
State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

g. Any reports, management letters, or other information required to be submitted to the Department of Agriculture and Consumer Services pursuant to this agreement shall be submitted timely in accordance with Florida Statutes, and Chapters 10.555 (National School Lunch Program) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

h. The Recipient shall maintain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department of Agriculture and Consumer Services, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Recipient shall ensure that audit working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

- H. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned. Available products, pricing and delivery information may be obtained by contacting: RESPECT of Florida, 2475 Apalachee Parkway, Suite 205, Tallahassee, Florida 32301-4946, telephone number (850) 487-1471 and fax number (850) 942-7832.
- I. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), Florida Statutes; and for the purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this Agency insofar as dealings with such corporation are concerned. The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Incorporated. Available products, pricing and delivery schedules may be obtained by contacting: PRIDE of Florida, 12425 28th Street, North, St. Petersburg, Florida 33716, telephone number (727) 572-1987.
- J. The CONTRACTOR is informed that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- K. The CONTRACTOR is informed that the employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

- L. The CONTRACTOR is informed that an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- M. In the event that two or more documents combine to form this agreement between the parties, including future amendments and addenda, and in the event that there are contradictory or conflicting clauses or requirements in these documents, the provisions of the document(s) prepared by the Department of Agriculture and Consumer Services Contract shall be controlling.
- N. All contracts entered into by the Department of Agriculture and Consumer Services or any Division or Bureau thereof, are and shall be controlled by Florida law, contrary provisions notwithstanding.
- O. In the event that any clause or requirement of this agreement is contradictory to, or conflicts with the requirements of Florida law, including, but not limited to requirements regarding contracts with Florida's governmental agencies, the offending clause or requirement shall be without force and effect and the requirements of the Florida Statutes and rules promulgated thereunder on the same subject shall substitute for that clause or requirement and be binding on all parties to this contract.
- P. Documentation and Audits

The following provisions of 1 through 8 are applicable regarding the administration of resources provided by the Department to the Recipient of Federal Funds. Those provisions are applicable if the Recipient is a state or local government or a nonprofit organization as defined in OMB Circular A-133, as revised.

- 1) In the event that the Recipient expends \$500,000 or more in Federal awards in its fiscal year, the Recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit 1 to this agreement indicates Federal resources awarded through this Department by this agreement. In determining the Federal awards expended in its fiscal year, the Recipient shall consider all sources of Federal awards, including Federal resources received from this Department. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Recipient conducted by the Auditor General in accordance with provisions of OMB Circular A-133, as revised, will meet these requirements.
- 2) In connection with these audit requirements, the Recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
- 3) If the Recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Recipient expends less than \$500,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Recipient resources obtained from other than Federal entities).
- 4) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by this agreement shall be submitted when required by Section .320(d), OMB Circular A-133, as revised, by or on behalf of the Recipient directly to each of the following:
 - a. The Department of Agriculture and Consumer Services
Division of Administration
509 Mayo Building
407 South Calhoun Street
Tallahassee, Florida 32399-0800
 - b. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320(d)(1) and (2), OMB Circular A-133,

as revised, should be submitted to the Federal Audit Clearinghouse) at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

- c. Other federal agencies and pass-through entities in accordance with Sections .320(c) and (f), OMB Circular A-133, as revised.

5. Pursuant to Section .320(f), OMB Circular A-133, as revised, the Recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letter issued by the Auditor, to the Department of Agriculture and Consumer Services at the following address:

The Department of Agriculture
and Consumer Services
509 Mayo Building
407 South Calhoun Street
Tallahassee, Florida 32399-0800

6. Any reports, management letters, or other information required to be submitted to the Department of Agriculture and Consumer Services pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, as revised.

7. Recipients, when submitting financial reporting packages to the Department of Agriculture and Consumer Services for audits done in accordance with OMB Circular A-133, as revised, should indicate the date that the reporting package was delivered to the Recipient in correspondence accompanying the reporting package.

8. The Recipient shall maintain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department of Agriculture and Consumer Services, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Recipient shall ensure that audit working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

(a) Compliance findings related to contracts with the department shall be based on the contract requirements, including any rules, regulations, or statutes referenced in the contract. Liabilities due to the department, because of unexpended funds or because funds were not expended in accordance with contract terms, shall be calculated and fully disclosed in the audit report. All questioned costs, with a reference to any department contract involved, shall be reported. These requirements do not expand the scope of the audit as prescribed by the current Government Auditing Standards (AYellow Book@).

(b) The Contractor will allow access to or furnish whatever information is necessary for the Department to monitor progress or performance to determine conformity with intended program purposes. The Contractor shall permit representatives of the Department or USDA to inspect donated food in storage, or the facilities used in handling or storing donated food; and to review and audit all records, including financial records pertinent to this contract at any reasonable time during normal working hours.

(c) The Contractor shall submit all reports in writing as required by the Department. Failure to file timely reports may be cause for cancellation of this contract.

(d) If this contract is terminated, the Contractor agrees to comply with written instruction from the Department.

Q. **Civil Rights Certification**

The Contractor assures that it will comply with Titles I and II of the Americans with Disability Act, as applicable on the day this contract is signed and as applicable on and after July 26, 1995.

- 1) The Contractor gives this assurance in consideration of and for the purpose of obtaining federal grants, loans, contracts (except contracts of insurance or guaranty), property, discounts, or other federal financial assistance to programs or activities receiving or benefiting from federal financial assistance. The Contractor agrees to complete the Civil Rights Compliance Questionnaire.
 - 2) The Contractor assures that it will comply with:
 - a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving or benefiting from federal financial assistance.
 - b. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance.
 - c. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.
 - d. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.
 - e. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs in programs and activities receiving or benefiting from federal financial assistance.
 - f. All relations, guidelines, and standards as are now or may be lawfully adopted under the above statutes.
 - 3) The Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of or benefit from federal financial assistance, and that it is binding upon the Contractor, its successors, transferees, and assignees for the period which such assistance is provided. The Contractor further assures that all contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of the above statutes, regulations, guidelines, and standards. In the event of failure to comply, the Contractor understands that the Grantor may, at its discretion, seek a court order requiring compliance with the terms of this assurance or seek other appropriate judicial or administrative relief, to include assistance being terminated and further assistance being denied.
- R. Certification Regarding Lobbying and Other Responsibility Matter; and Drug-Free Workplace Requirements must be completed and returned as part of this contract (Attachment VI).
- S. "In accordance with Federal law and U.S. Department of Agriculture (USDA) policy, this Contractor is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTD). USDA is an equal opportunity provider and employer.”

T. **Federal Laws and Regulations**

- 1) If this contract contains federal funds, the Contractor shall comply with the provisions of 45 CFR, Part 74, and/or 45 CFR, Part 92, and other applicable regulations.
 - 2) If this contract contains federal funds and is over \$100,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under Section 306 of the Clean Air Act, as amended (42 U.S.C. 1857(h) et seq.), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). The Contractor shall report any violations of the above to the Department.
- U. The Processor must submit a current performance and surety bond from a company listed in Circular 570, Surety Companies Acceptance on Federal Bonds. The bond shall be made payable to the Florida Department of Agriculture and Consumer Services. The amount of the bond must be in an amount that is sufficient to protect the contract value of donated foods. The Florida Department of Agriculture and Consumer Services shall determine the dollar value of the bond. Minimum amount for new companies will be \$10,000.00.
- V. Upon receipt of shipment of USDA commodities, the processor will complete the “Receive Shipment” notification form promptly using the USDA’s Electronic Commodity Ordering System (ECOS).
- W. Provide to FDACS with Monthly Performance Reports all applicable supporting documentation to support proper value pass through has occurred or proper fee for service was charged. This should include delivery and/or billing invoices, refund applications, velocity reports, cancelled checks or other documentation as applicable. (See Article 3)
- X. All poultry processors will process under Option 2 Grading for Florida contracts.
- Y. Provide ending inventory balances to recipient agencies at a minimum on a monthly basis.
- Z. Processors currently approved and participating in the United States Department of Agriculture (USDA) beef and pork demonstration project may use their approved substitution plans when supplying finished product for Florida.
- AA. Nutritional Analysis. A nutritional analysis of the finished products that contribute to the meal pattern must be provided upon the request of RA.
- BB. Typographical, spelling, and grammatical errors contained in this agreement will have no effect on other provisions of this agreement.
- CC. Proof of Marketability - Processor must demonstrate at least one year (immediately preceding) of experience successfully producing and marketing further processed end products or the commercial equivalent to Florida schools. The commercial products must be similar in nature to the products identified on the Summary End Products Data Schedules (SEPDS).

In addition to the forgoing provisions, the Processor agrees to the following terms and conditions required by the DA, local and State Laws.

36. **PERIOD OF AGREEMENT**

This Agreement shall become effective on July 1, 2009 and will terminate on June 30, 2010. This Agreement may be extended for two-one year periods.

37. **COMMODITY FOOD VALUE PASS THROUGH SYSTEM**

The Processor shall designate arrangements to be used during the term of the Agreement (Refer to Article 3). Check the following selected system.

- | | |
|--|---|
| <input type="checkbox"/> 1. Direct Sale Discount | <input type="checkbox"/> 4. Indirect Sale Refund |
| <input type="checkbox"/> 2. Direct Sale Refund | <input type="checkbox"/> 5. Fee for Service |
| <input type="checkbox"/> 3. Indirect Sale Discount | <input type="checkbox"/> 6. Other (with prior approval) |

38. **AUTHORIZED PROCESSOR SIGNATURE**

The Agreement must be signed by the Owner, Partner, or Corporate Officer duly authorized to sign contractual agreements. Disclosure of ownership of the Processor shall be submitted if requested by the DA.

Private Owned-The Owner must sign this Agreement.
Partnership-A Partner must sign this Agreement.
Corporation-A Corporate Officer must sign this Agreement.

If an employee other than these specified individuals' signs this Agreement, a Power of Attorney indicating employee's authority must accompany this Agreement. All addenda to this Agreement shall be signed by the authorized individual who signed this Agreement except that the EPDS could be signed by his/her authorized designee.

In witness whereof, the Parties hereto have caused this Agreement to be signed by their respective agent.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

Attachment I

SUGGESTED FORMAT FOR SURETY BONDS

BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS, that we (Processor/company) and _____, (hereinafter called the Principal) _____ a corporation (hereinafter called the Surety), are held and firmly bound unto the (name of distributing agency), (hereinafter called the Obligee), in the amount of Dollars (\$ _____), lawful money of the United States, for payment of which well and truly to be made, we hereby find ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee under this bond, is desirous of turning over to Processor Principal Hereunder, certain unfinished USDA commodity foods for the purpose of processing said foods in accordance with the _____ (contract year) State Processing Agreement in writing made with said food processor, which the (name of distributing agency) Agreement is hereby made a part of the bond as fully as if recited herein.

NOW THEREFORE, if the above bounded Principal Processor shall honestly and faithfully handle said materials and account for same, and process, manufacture, package or finish such foods according to the specification in said Commodity food Processing Agreement, and returns said finished product (s) to the Eligible Recipient Agencies in satisfactory condition, keeping and truly performing any other applicable covenants or conditions in said Agreement recited, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED HOWEVER, that if the Surety performance of said Agreement is prevented, hindered or delayed by Force Majeure, such as fire, flood, hurricane, earthquake, Executive Order of Government, war, civil commotion, strike or the similar cause beyond the control of the Surety, then the obligation under this bond shall be suspended to the extent that performance is prevented, hindered, or delayed thereby.

PROVIDED FURTHER, that the term of this bond shall be in effect from July 1, 2009 to December 31, 2010.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their hands and seals, this _____ day of _____ 2009.

Attachment II

SUBCONTRACTOR AGREEMENT

Subcontractor Agreement: Authority USDA FNS title 7 CFR Part 250

Whereas _____ (primary processor) holds a Master Commodity Food Processing Agreement with the _____ covering the period from July 1, 2009 to June 30, 2010 (hereinafter "Agreement") and whereas _____ (subcontractor) desires and is capable of performing part of the Agreement, namely _____ (Specify function and USDA commodity foods used). It is further agreed that the Subcontractor mentioned above will conform to all terms and conditions of the above named Agreement, making this addendum part of that Agreement.

Subcontractor shall maintain records for three (3) years from the close of the federal fiscal year to which they pertain and shall make them available for inspection by either state, federal or local representatives at any time without prior notice, during normal office hours. Processor records shall include the following:

- A. Quantity of raw DF received from Primary processor for each month.
- B. Quantities of raw DF and end products remaining on hand for each month.
- C. Quantities of end products delivered to RA or back to the Primary Processor.

An End Product Data Schedule must be signed by the Processor and the Subcontractor and attached to this addendum for the end products that are being processed, or any other function for which the subcontractor is performing.

ALL PARTIES APPROVED BY SIGNING BELOW:

=====

PRIMARY PROCESSOR

Primary Processor _____ Title _____ Telephone No. _____

Name _____ Address _____

Signature _____ Date _____

=====

SUBCONTRACTOR

Subcontractor _____ Title _____ Telephone No. _____

Name _____ Address _____

Signature _____ Date _____

=====

FOOD DISTRIBUTION APPROVAL

State Distributing Agency

Name _____ Title _____

Signature _____ Date _____

