



**AGREEMENT FOR DIRECT DISTRIBUTION**

THIS AGREEMENT IS BETWEEN THE STATE OF NEW YORK, EXECUTIVE DEPARTMENT, OFFICE OF GENERAL SERVICES, DIVISION OF FOOD DISTRIBUTION AND

\_\_\_\_\_  
(Name & Address of Recipient Agency)

County: \_\_\_\_\_ LEA Code: \_\_\_\_\_

Recipient Agency Code: \_\_\_\_\_

A Recipient Agency (RA) is defined as:

- A School Food Authority which is defined as the governing body responsible for the administration of one or more schools and which has the legal authority to operate a not-for-profit school food service or National School Lunch Program (NSLP);

OR

- Non-residential child or adult care institution means any child or adult care institution which participates in the Child and Adult Care Food Program (CACFP) authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

The RA certifies that it is not-for-profit and tax exempt and hereby makes application for USDA foods purchased by the United States Department of Agriculture (USDA) to the State of New York Executive Department, Office of General Services, Division of Food Distribution & Warehousing, hereinafter referred to as the State Distribution Agency (SDA), for distribution to said RA, and agrees to the terms and conditions regarding the receipt, transportation, handling, storage, record keeping, preparation, use, and disposal of such USDA foods, as set forth by the SDA, and to charges that the SDA assesses for the administration of said program, including storage, transportation, and administrative charges. The RA further agrees to abide by applicable Federal and State regulations, in particular those found at 7CFR Part 210 and 250.

**TERM OF THIS AGREEMENT**

THE TERM OF THIS AGREEMENT SHALL COMMENCE EFFECTIVE \_\_\_\_\_, AND SHALL BE CONSIDERED PERMANENT UNLESS TERMINATED BY EITHER PARTY (see item 20).

**ALLOCATION AND DISTRIBUTION**

1. The SDA agrees that it will make available to the RA foods purchased by the USDA and accepted by the SDA in such quantities and at such times as the SDA shall determine, but not to exceed such quantities as the RA declares it can accept without loss.
2. The terms "distribute" or "distribution" as used in this agreement, shall be deemed to mean the allocation and making available to such RA or its authorized agent at the SDA's place of storage of the USDA foods.

3. The RA shall designate a representative(s) who shall be charged with the responsibility for the proper management and control of all activities pertaining to the acceptance and use of USDA foods. Such representative(s) shall be authorized to sign on behalf of the RA requests for USDA foods, reports or other documents necessary in the operation of the program. This provision shall not prevent a RA from authorizing an agency to accept or sign and acknowledge receipt for such USDA foods, but any authorized act of the agent shall be deemed to be an act of the RA.
4. The RA further agrees to confine distribution or use of USDA foods received from the SDA to or by persons served in the not-for-profit Child Nutrition Program. Schools not serving complete meals, but otherwise meeting the above requirements, may receive only USDA foods that do not require preparation for serving. Such distribution and use shall not be in excess of the maximum rates of distribution established by the USDA and the SDA.
5. Immediately upon notice to the RA that USDA foods have been made available and are ready for delivery to it, the RA agrees that it will accept delivery and transport at its own expense such USDA foods from the warehouse or commercial distributor of the SDA, or other designated place, to the place where the RA will utilize or store such USDA foods in accordance with this agreement. Upon transfer or delivery to the RA or its authorized agent, the care of the USDA foods becomes the responsibility of the RA.
6. The RA agrees to accept delivery of any allocation of USDA foods during the time period designated by the SDA in its notification to the RA, and any allocation of USDA foods which is not picked up by the RA during said period may be canceled.
7. A RA's commodity entitlement is computed by the SDA based on the total number of reimbursable lunches served in the previous school year. This data is provided by the NYS Department of Education and the per-meal rate established by the USDA. The RA agrees to complete and timely submit each month an "Inventory Request Form" supplied by the SDA or enter their order into the USDA's online ordering system. Instructions for completion are available. The SDA does not guarantee that all requests will be filled in total.

#### **CUSTODY AND CARE OF USDA FOODS**

8. The RA agrees that care will be exercised at all times to prevent USDA foods from being distributed or used in such quantities or manner as to encourage waste, deterioration, or misuse.
9. The RA agrees to furnish adequate personnel and proper facilities to receive, handle, store, distribute, prepare, and serve the USDA foods. The RA may store and inventory USDA foods together with commercially purchased foods and other foods, under a single inventory management system.
10. The RA agrees to exercise the highest degree of diligence to prevent loss or damage of USDA foods through fire, theft, freezer or cooler failure, infestation, or deterioration, or any other cause during the time when said USDA foods are stored by the RA.

In compliance with 7CFR 250.13(i) – Whoever willfully misapplies, steals, or obtains by fraud, USDA foods shall be subject to Federal criminal prosecution.

11. USDA foods received under this agreement will be used solely for the benefit of those persons served by the RA, and only on the premises and will not be traded or sold.
12. The RA agrees to investigate promptly all complaints received in connection with the distribution or use of USDA foods and to correct any irregularities disclosed, reporting promptly to the SDA in each instance. If the SDA determines that a claim must be made against the RA for failure to have properly distributed or use USDA foods, then said RA shall promptly pay any such claim presented.

13. The RA agrees to utilize all USDA foods sent to processors in the year in which it was intended to be used. Failure to utilize these foods will result in the SDA absorbing the unutilized pounds into the SDA account to be redistributed to other RA's.
14. No warranty, in law or in fact is to be deemed to exist from the SDA or to any persons, groups or other recipients of USDA foods with respect to the USDA foods distributed under this agreement. No liability upon the part of the SDA shall arise under or by virtue of this agreement.

### **COMMERCIAL TRUCKING**

15. If a Recipient Agency utilizes the services of a commercial trucking company, an agreement must be in place stating that the value of USDA foods are insured and clarifying responsibilities if the USDA foods are not going to be delivered on the same day they are picked up from the warehouse. The agreement must include the trucking company's disclosure regarding how/where the USDA foods are to be stored overnight, prior to delivery to the recipient agency, and in addition how they will maintain the safety and integrity of the food. OGS Food Distribution will hold the Recipient Agency responsible for the value of the USDA foods at all times and may subsequently charge the Recipient Agency at any time in which the USDA foods become unwholesome due to improper transportation/storage.

### **INSPECTION**

16. The RA agrees that representatives of the USDA and/or the SDA may inspect the recipient agencies facilities at any reasonable time.

### **RECORDS**

17. The RA will maintain and keep accurate records with respect to the receipt of USDA foods including end products processed from USDA foods for a period of three years from the close of the fiscal year to which they pertain. These records shall be open to inspection by representatives of the USDA and/or the SDA.

### **ADMINISTRATIVE AND LEGAL CHARGES**

18. The RA agrees to pay to the SDA its proportionate share of all administrative costs associated with the distribution of USDAUSDA foods to such RA, including the cost of storage, handling, processing and transportation of USDA foods distributed by the SDA (i.e., the costs associated with the receipt, storage and distribution of locally grown produce), and of such other miscellaneous costs as are incurred on behalf of Recipient Agencies, based on an equitable formula established by the SDA whenever such cost is billed to the RA by the SDA. Payment by the RA shall be deducted from the amount apportioned by the State of New York to such Recipient Agencies under the National School Lunch Program.

In the case of Recipient Agencies not participating in the National School Lunch Program, the said costs shall be paid within thirty days of billing.

19. In the event any claim shall arise under this agreement against the RA, the SDA or the United States Department of Agriculture shall be entitled to seek all costs of litigation and reasonable attorney fees.

### **TERMINATION**

20. Either agency may terminate this agreement for convenience by giving thirty (30) days notice in writing to the other party. The SDA may cancel this agreement immediately upon receipt of evidence that the RA has not been in full compliance with the terms and conditions herein.

## **DISCRIMINATION**

21. The RA agrees that in the operation of school lunch programs, food will be served in a common dining room, wherever possible, and there will be no discrimination or segregation whatever between paying and nonpaying persons in the food service and the manner of serving.

The RA further agrees that in accordance with the Civil Rights Act of 1964 as amended and Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory, regulatory and constitutional non-discrimination provisions, the RA will not discriminate against employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

This agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the SDA upon the basis of a finding made by the State Division of Human Rights that the RA has not complied with these non-discrimination clauses.

## **MISCELLANEOUS**

22. The RA agrees to provide the State Distribution Agency with any information updates regarding changes in the RA's address, telephone number, contact person, etc.
23. This agreement shall be deemed executory only to the extent of monies available to the SDA for the performance of the terms hereof and no liability shall be incurred by the Office of General Services and/or the People of the State of New York beyond the money available for such purpose.
24. The RA agrees to preserve the right to assert claims against other persons to whom they deliver USDA foods for care, handling or distribution and to take action to obtain restitution where appropriate or as directed by the SDA.
25. The RA agrees that it will observe and comply with Sections 139a and 139b of the New York State Finance Law, together with all applicable provisions of the State Labor Law in the performance of this contract.

### **USDA Non-Discrimination Statement**

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, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.), should contact the agency (state or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](http://www.ascr.usda.gov/complaint_filing_cust.html), (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter 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;

(2) fax: (202) 690-7442; or

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

This institution is an equal opportunity provider.

**NOTE: This agreement must be signed by an employee of the school who is authorized to enter into agreements with outside agencies (i.e.; Food Service Director, Business Manager, or Superintendent).**

**RECIPIENT AGENCY (RA):**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Email Address**

\_\_\_\_\_  
**Phone**

**OGS Food Distribution (SDA):**

\_\_\_\_\_  
**Signature**

Maureen Barbic  
**Print Name**

Assistant Director  
**Title**

\_\_\_\_\_  
**Date**

(September 2016)