

**NEW YORK STATE EDUCATION DEPARTMENT CHILD NUTRITION PROGRAM
SINGLE PERMANENT AGREEMENT**

Contracting Entity's Legal Name

Basic Education Data System (BEDS)

Federal Employer Identification Number (FEIN)

**National School Lunch Program, Afterschool Snack Program, School Breakfast Program,
Special Milk Program, Summer Food Service Program**

The New York State Education Department (hereinafter referred to as "NYSED" or "State Agency"), and _____, (hereinafter referred to as "Contractor"), do hereby make and enter into this Single Permanent Agreement (Agreement), as required by the Richard B. Russell National School Lunch Act (42 USC §1751 *et seq.*) and the Child Nutrition Act (42 USC § 1771 *et seq.*), as amended (hereinafter referred to as the "Acts"), United States Department of Agriculture's (USDA) Instruction 113-1, 7 CFR Part 245, and the following program regulations: the National School Lunch Program (NSLP), 7 Code of Federal Regulations (CFR) Part 210; the School Breakfast Program (SBP), 7 CFR Part 220; the Summer Food Service Program (SFSP), 7 CFR Part 225, the Special Milk Program (SMP), 7 CFR Part 215.

A. DEFINITIONS

1. Child Nutrition Programs (CNP or Program(s)): shall mean all services provided under the authority of the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Afterschool Care Program (Snack), Summer Food Service Program (SFSP).
2. Contractor: shall mean (1) a school food authority (SFA), which means the governing body which is responsible for the administration of one or more schools and has the legal authority to operate the Programs therein or be otherwise approved by the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS); or (2) Local Education Agency (LEA) means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child

care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools; or (3) a sponsor of the Summer Food Service Program (SFSP), which means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, or a private nonprofit organization which develops a special summer or other vacation Program providing food service similar to that made available to children during the school year under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) and which is approved to participate in the Program.

3. All other terms in this Agreement have the same meaning as they are defined in CNP laws, regulations and guidance.

B. CONTRACT PROGRAM ADMINISTRATION AND FINANCIAL MANAGEMENT

1. Contractor certifies that all information contained in their CNP application and supporting documentation is accurate and correct and up to date. Contractor agrees to notify NYSED a manner prescribed by NYSED of any changes to contractor's Program participation in accordance with NYSED's policies and procedures. Contractor will comply with all laws and regulations and any and all amendments to all laws and regulations applicable to its designated Program, including but not limited to, 7 CFR Parts 245 and 250, as amended, the Uniform Federal Assistance Regulation (7 CFR Part 3015, as amended), Uniform Administrative Requirements For Grants and Cooperative Agreements To State And Local Governments (7 CFR Part 3016, as amended), as applicable, Uniform Administrative Requirements For Grants and Agreements With Institutions Of Higher Education, Hospitals, and Other Non-Profit Organizations (7 CFR Part 3019, as amended), as applicable, Audits of State, Local Governments, and Non-Profit Organizations (7 CFR Part 3052, as amended), the Office of Management and Budget (OMB) Super-Circular (A-87, A-122, A-133 consolidated in Title 2 CFR), all USDA instructions, policy memoranda, guidance and other written directives interpreting the laws and regulations applicable to the Program(s), state rules, regulations, policies and procedures as issued and amended by NYSED and all other federal, state or local laws applicable to CNPs administered by NYSED and fully incorporated herein by reference.
2. Contractor further agrees to perform as described in this Agreement, application documents, policy statements and supporting documents, and approved amendments to the application or this Agreement for participation in Child Nutrition Programs.

C. PARTICIPATION IN THE NATIONAL SCHOOL LUNCH PROGRAM (CFDA#10.555)¹

1. NYSED agrees, subject to the availability of funds and the continuance of the Federal Program under the Acts, as amended, that it will reimburse the Contractor on behalf of lunches served to eligible children attending recognized and approved schools for which this Agreement is in effect. The reimbursement will not exceed an amount equal to the number of reimbursable first

¹ Catalog of Federal Domestic Assistance (CFDA) can be accessed at www.cfda.gov.

meals served to eligible children, multiplied by the rate assigned by the USDA and NYSED, if applicable.

2. The Contractor agrees that it is the recognized authority having supervision and control over the operation of the NSLP in the schools for which it makes application, and the Contractor shall supervise all program operations in such schools, in such a manner as will ensure compliance therein, with the terms and conditions of this Agreement.
3. The Contractor who made written application and was approved to participate in the NSLP shall:
 - a. Make written application to NYSED or USDA where applicable, for any school in which it desires to operate, if such school did not participate in the prior school year. The Contractor shall also submit for approval, either with the application or at the request of the NYSED or USDA where applicable, a free and reduced price policy statement in accordance with 7 CFR Part 245;
 - b. Obtain a minimum of two food safety inspections per school year conducted by a State or local governmental agency responsible for food safety inspections annually and provide NYSED with notification of such food safety inspections in a manner and format prescribed by NYSED. Schools participating in more than one child nutrition program shall only be required to obtain a minimum of two food safety inspections per school year if the food preparation and service for all meal Programs take place at the same facility. Schools shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request;
 - c. Implement a food safety program meeting the requirements of 7 CFR §§210.13(c) and 7 CFR 210.15(b)(5) of this chapter at each facility or part of a facility where food is stored, prepared, or served;
 - d. 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;
 - e. 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);
 - f. Maintain a financial management system in accordance with CNP laws, regulation and policy prescribed by NYSED and USDA;
 - g. Comply with the requirements of USDA's regulations regarding financial management (7 CFR Part 3015 and 7 CFR Part 3016, or 7 CFR Part 3019, 7 CFR Part 3052 and the Office of Management and Budget (OMB) Super-Circular A-87, A-122, A-133 consolidated in Title 2 CFR);
 - h. Serve lunches, during the lunch period, which meet the minimum meal pattern requirements prescribed in 7 CFR §210.10;

- i. Price the lunch as a unit;
 - j. Serve lunches free or at a reduced price to all eligible children;
 - k. 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 Contractor or its authorized official or representative signing and submitting the claim shall be responsible for reviewing and analyzing meal counts to ensure accuracy as specified in 7 CFR §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 7 CFR §210.25. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in 7 CFR §210.26 shall apply;
 - l. 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 NYSED;
 - m. Submit Claims for Reimbursement in accordance with 7 CFR §210.8;
 - n. Make no discrimination against any child because of his or her eligibility for free or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement;
 - o. Enter into an agreement to receive donated foods as required by 7 CFR Part 250;
 - p. 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;
 - q. 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; and
 - r. Maintain necessary facilities for storing, preparing and serving food.
4. The Contractor agrees that the NSLP shall be operated on a non-profit basis and shall limit its operating balance to a level consistent with program needs. Income accruing to the NSLP of any school shall be used only for program purposes providing, however, that such income shall not be used to purchase land, to acquire or construct buildings, or to make alterations of existing buildings.
 5. The Contractor agrees to serve a reimbursable lunch, meeting the minimum nutritional requirements as specified for each age group by USDA and claim only one meal per eligible child per day. Such reimbursable lunches shall be subject to reimbursement only if served to an eligible child during a period specifically designated as the lunch period. Substitutions may be made in the minimum food components of a reimbursable lunch if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority, which includes recommended alternate foods. If emergency conditions prevent a

school from obtaining a delivery of milk, NYSED may approve the service of lunches without milk during the emergency period.

D. PARTICIPATION IN THE AFTERSCHOOL CARE (SNACK) PROGRAM (CFDA#10.555)

1. NYSED agrees, subject to the availability of funds and the continuance of the Federal Program under the Acts, as amended, that it will reimburse the Contractor on behalf of afterschool snacks served to eligible children attending recognized and approved schools for which this Agreement is in effect. The reimbursement will not exceed an amount equal to the number of reimbursable snacks served to eligible children, multiplied by the rate assigned by the USDA and if applicable, NYSED.
2. The Contractor agrees that it is the authority having supervision and control over the operation of the Snack Program in the schools for which it makes application, and the Contractor shall supervise all program operations in such schools, in such a manner as will ensure compliance therein, with the terms and conditions of this Agreement
3. The Contractor who made written application and was approved to participate in the Snack Program shall:
 - a) Serve meal supplements which meet the minimum requirements prescribed in 7 CFR §210.10;
 - b) Price the meal supplement as a unit;
 - c) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;
 - d) Claim reimbursement at the assigned rates only for meal supplements served in accordance with this Agreement;
 - e) Claim reimbursement for no more than one meal supplement per child per day;
 - f) 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;
 - g) Limit participation to after school care Programs which include education or enrichment activities in organized, supervised and structured settings;
 - h) Administer the Program by the district or school, although another organization such as a PTA can operate it;

- i) Limit participation only for space or security considerations. Programs which include supervised athletic activity (not interscholastic sports) along with education or enrichment activities may participate as long as the athletic activities are open to all;
- j) Meet the eligibility criteria for: 1) free reimbursement for sites located in areas served by a school in which 50 percent of the enrolled children are eligible for free or reduced price meals, or; 2) claim snacks by category based on the child's eligibility;
- k) Claim snacks which are served in programs which operate after the children's school day has ended unless the school has received approval for an extended day operation or other conditions prescribed by NYSED or USDA;
- l) Claim snacks only for children through age 18. However, if a child turns 19 during the school year, he/she may be claimed for the remainder of the year;
- m) Serve reimbursable snacks to individuals in after school care Programs who are determined to be mentally or physically disabled, regardless of age;
- n) Serve snacks which meet the federal, State and local meal pattern requirements and consists of two different components in proper portion sizes, serve and claim only one snack meal per child per day; and
- o) Maintain a financial management system in accordance with CNP laws, regulation and policy prescribed by NYSED and USDA.

E. PARTICIPATION IN THE SCHOOL BREAKFAST PROGRAM (CFDA# 10.553)

1. NYSED agrees, subject to the availability of funds and the continuance of the Federal Program under the Acts, as amended, that it will reimburse the Contractor on behalf of breakfasts served to eligible children attending recognized and approved schools for which this agreement is in effect. The reimbursement will not exceed an amount equal to the number of reimbursable first meals served to eligible children, multiplied by the rate assigned by the USDA and NYSED if applicable.
2. The Contractor agrees that it is the authority having supervision and control over the operation of the SBP in the schools for which it makes application, and the Contractor shall supervise all program operations in such schools, in such a manner as will ensure compliance therein, with the terms and conditions of this Agreement and applicable federal and State regulations and policy.
3. The Contractor who made written application and was approved to participate in the SBP shall :
 - a. Make written application to NYSED or USDA where applicable, for any school in which it desires to operate the SBP, if such school did not participate in the SBP in the prior school year. The Contractor shall also submit for approval, either with the application or at the request of the

NYSED or USDA where applicable, a free and reduced price policy statement in accordance with 7 CFR Part 245.

- b. Obtain a minimum of two food safety inspections per school year conducted by a State or local governmental agency responsible for food safety inspections annually and provide NYSED with notification of such food safety inspections in a manner and format proscribed by NYSED. Schools participating in more than one child nutrition Program shall only be required to obtain a minimum of two food safety inspections per school year if the food preparation and service for all meal Programs take place at the same facility. Schools shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request;
- c. Implement a food safety program meeting the requirements of 7 CFR §§210.13(c) and 7 CFR 210.15(b)(5) of this chapter at each facility or part of a facility where food is stored, prepared, or served;
- d. Maintain a nonprofit school food service in accordance with the financial management system established under 7 CFR §220.13(i) of this part, use all revenues received by such food service only for the operation or improvement of that food service *Except that*, facilities, equipment, and personnel supported with funds provided to a school food authority under this part may be used to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*). Revenues received by the nonprofit school food service shall not be used to purchase land or buildings or to construct buildings;
- e. Limit its net cash resources to an amount that does not exceed three months average expenditure for its nonprofit school food service or such other amount as may be approved by the State agency;
- f. Observe the limitations on any competitive food service as set forth in 7 CFR §220.12;
- g. Serve breakfasts which meet the minimum meal pattern requirements prescribed in 7 CFR §220.8, during a period designated as the breakfast period by the school;
- h. Price the breakfast as a unit;
- i. Supply breakfast without cost or at reduced price to all children who are determined by the Contractor to be unable to pay the full price thereof in accordance with the free and reduced price policy statements approved under 7 CFR Part 245;
- j. Make no discrimination against any child because of his inability to pay the full price of the breakfasts;
- k. Claim reimbursement at the assigned rates only for breakfasts served in accordance with the agreement;

- l. Submit Claims for Reimbursement in accordance with 7 CFR §220.11 and procedures established by NYSED and USDA where applicable;
- m. 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 all federal, state and local food safety requirements;
- n. Purchase, in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the NYSED or USDA, where applicable;
- o. 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;
- p. Maintain safe facilities for storing, preparing, and serving food in accordance with federal, state and local laws or regulations; and
- q. Maintain a financial management system in accordance with CNP laws, regulation and policy prescribed by NYSED and USDA.

F. PARTICIPATION IN THE SPECIAL MILK PROGRAM (CFDA #10.556)

1. NYSED agrees, subject to the availability of funds and the continuance of the federal Program under the Acts, as amended, that it will reimburse the Contractor on behalf of milk served to eligible children in accordance with SMP requirements.
2. The Contractor agrees that it is the authority having supervision and control over the operation of the SMP for which it makes application, and the Contractor shall supervise all program operations in such schools, in such a manner as will ensure compliance therein, with the terms and conditions of this Agreement.
3. The Contractor who made written application and was approved to participate in the SMP shall:
 - a. Make written application to NYSED or USDA where applicable, for any school in which it desires to operate the SMP, if such school did not participate in the SMP in the prior school year. If the Contractor so wishes to provide free milk, the Contractor shall also submit for approval, either with the application or at the request of the NYSED or USDA where applicable, a free milk policy statement in accordance with 7 CFR Part 245.
 - b. Operate a nonprofit milk service. However, the Contractor may use facilities, equipment, and personnel supported with funds provided to a school food authority under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*);
 - c. If electing to provide free milk (i) serve milk free to all eligible children, at times that milk is made available to non-needy children under the Program;

- d. Make no discrimination against any needy child because of his inability to pay for the milk;
- e. Claim reimbursement only for milk as defined in accordance with CNP laws, regulations and policy and the provisions of 7 CFR §215.8 and 7 CFR §215.10;
- f. Submit Claims for Reimbursement in accordance with 7 CFR §215.10 and procedures established by the NYSED and USDA where applicable;
- g. Maintain a financial management system in accordance with CNP laws, regulation and policy prescribed by NYSED and USDA; and
- h. Only fluid milk, fat free and/or low-fat milk purchased for service to eligible children, which meets applicable State and local standards shall be eligible for reimbursement.

G. PARTICIPATION IN THE SUMMER FOOD SERVICE PROGRAM (CFDA #10.559)

1. NYSED agrees, subject to the availability of funds and the continuance of the Federal Program under the Acts, as amended, that it will reimburse the Contractor on behalf of first meals served to eligible children participating in the Summer Food Service Program (SFSP) in accordance with program laws, regulations and policy.
2. The Contractor agrees that it meets all the eligibility requirements and has the administrative and financial capability to administer the Program. The Contractor agrees that it is the authority having supervision and control over the operation of the SFSP at the site(s) for which it makes application, and the Contractor shall supervise all program operations in such site(s), in such a manner as will ensure compliance therein, with the terms and conditions of this Agreement and all federal, state and local laws, regulations and policies.
3. The Contractor who made written application and was approved to participate in the SFSP shall:
 - a. Maintain a nonprofit food service and observe the requirements for and limitations on the use of nonprofit food service revenues set forth in federal laws, regulations and guidance;
 - b. Operate a nonprofit food service in accordance with federal and state laws, regulations and policies during the period specified, as follows: (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;
 - c. Serve meals which meet the requirements and provisions set forth in 7 CFR § 225.16 during times designated as meal service periods by the Contractor and serve the same meals to all eligible children;

- d. Serve meals without cost to all eligible children and demonstrate that only eligible children are receiving the benefit of the Program;
- e. Contractors who operate a camp will collect information on participants' eligibility to support its claim for reimbursement;
- f. Contractors who operate a camp that charge separately for meals agree:
 - (i) That the eligibility standards conform to the Secretary's family size and income standards for reduced price school meals, and that households are permitted to apply on behalf of children who are members of households receiving food stamps, Temporary Assistance to Needy Families (TANF) or Food Distribution Program on Indian Reservations (FDPIR) benefits using the categorical eligibility procedures described in 7 CFR 225.15 (f);
 - (ii) That the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals. Such hearing procedures shall meet the requirements set forth in 7 CFR 225.6 (c) (5);
 - (iii) That if a family requests a hearing, the sponsor shall continue to serve a child free meals until a decision is rendered;
 - (iv) That there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by USDA.
- g. Issue a free meal policy statement in accordance with 7 CFR § 225.6(c) and demonstrate that only eligible children are receiving the benefit of the Program;
- h. Meet the training requirement for its administrative and site personnel, as required under 7 CFR § 225.15(d)(1);
- i. Claim reimbursement only for the type or types of meals specified in the application and this Agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who meet the Program's income standards. The agreement shall specify the approved levels of meal service for the sponsor's sites if such levels are required under 7 CFR § 225.6(d)(2). No permanent changes may be made in the serving time of any meal unless the changes are approved by NYSED;
- j. Submit claims for reimbursement in accordance with procedures established by the NYSED, and those stated in 7 CFR § 225.9;

- k. That the storage, preparation and service of food, will be maintained in proper sanitation and health standards in conformance with all applicable State and local laws and regulations;
- l. Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by USDA;
- m. Have access to facilities necessary for storing, preparing, and serving food;
- n. Maintain a financial management system in accordance with CNP laws, regulations and policy as prescribed by NYSED and USDA;
- o. Maintain on file documentation of site visits and reviews in accordance with 7 CFR § 225.15(d) (2) and (3) and CNP record retention policies;
- p. Maintain children on site while meals are consumed; and
- q. Retain final financial and administrative responsibility for its program.

H. STANDARD AGREEMENT TERMS

1. If the Contractor operates its Child Nutrition Program under a fee, concession or contract arrangement with a food service management company or under a similar arrangement, Contractor must have its contract approved by NYSED, in accordance with NYSED and USDA standards and procedures, to be eligible for Program reimbursement and such contract must be properly procured in accordance with federal, state and local laws, regulations and guidance.
2. The Contractor agrees to abide by all federal, State and local procurement rules and regulations.
3. If any part of the money received by the Contractor, in connection with this Program, by any improper or negligent action is diminished, lost, misapplied or diverted from the Child Nutrition Program covered under this Agreement by the Contractor, USDA or NYSED may order such money to be replaced by the Contractor, may recover such amount from any funds accruing to the Contractor under any child nutrition Program, or any other moneys to be apportioned by NYSED to the Contractor. In the event that NYSED orders such money to be replaced by the Contractor, the Contractor hereby agrees to make such replacement.
4. The Contractor agrees that NYSED may make adjustments in rates of reimbursement in order to comply with the matching requirements of the Acts and of the agreement between the NYSED and USDA. Notice of any such adjustments to be so made, will be given in writing by NYSED to the Contractor, as far in advance of the effective date thereof, as practicable.
5. The Contractor hereby certifies that it meets the eligibility criteria for each program and each facility for which it makes application and is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, as amended.

6. Contractor will assume full responsibility for the accuracy of all claims for reimbursement submitted to NYSED or USDA pursuant to this Agreement.
7. Contractor agrees that all CNP funds will be utilized exclusively for reasonable, necessary and allocable CNP costs in accordance with all CNP laws, regulations, policy and guidance.
8. This agreement shall be void and of no effect unless the Contractor shall secure compensation for the benefit of and keep insured during the life of this Agreement, such employees engaged thereon as are required to be insured by the provisions of the Workmen's Compensation Law.
9. The Contractor agrees that it shall observe and comply with all the applicable provisions of the Labor Law in the performance of this Agreement.
10. The Contractor hereby agrees to the provisions of Section 139-b of the New York State Finance Law, which requires that upon the refusal of a person, when called before a grand jury to testify concerning any transaction or agreement had with the State, any political subdivision thereof, a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or agreement, (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any agreement with New York State or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and (b) any and all contracts made with the State of New York or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer maybe canceled or terminated by New York State without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.
11. During the performance of this agreement, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, sex, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, sex, color or national origin. Such action shall be taken without reference, but not limited to: recruitment, employment job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training;
 - b. The Contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the Sponsor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by the State Agency as part of the bid or negotiation of this Agreement, the Contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, sex, color or national origin and that such labor union or representative either

will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and terms and conditions of employment under this agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that furnish such a statement, the Contractor shall promptly notify the State Commission for Human Rights of such failure or refusal;

- c. The Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses. (a) and (b) and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine;
- d. The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, sex, color or national origin in accordance with New York State requirements;
- e. The Contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law and will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law;
- f. This Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the State Agency upon the basis of a finding made by the State Commission for Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future agreements made by or on behalf of the state or a public authority or agency of the State, until he satisfies the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor and an opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law; and
- g. The Contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Agency may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the State Agency, the Contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

12. In accordance with FNS Instructions 113-1, Contractors participating in the NSLP, SBP, and SMP assures NYSED and USDA that the program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and 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 benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement. By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts 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 Program applicant, 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 the behalf of the Program applicant.

13. In accordance with FNS Instructions 113-1, Contractors participating in the SFSP assures NYSED and USDA that the Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement. This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, 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 purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance. By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books,

and accounts 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 Program applicant, 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 the behalf of the Program applicant.

14. The Contractor assures NYSED that it does not discriminate or deny access to the Program benefits on the basis of age, color, creed, disability, handicapping condition, marital status, veteran status, national origin, race or sex. This policy is in compliance with Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C.§794).
15. This Agreement shall be deemed executor only to the extent of moneys available to NYSED for the performance of the terms hereof and no liability shall be incurred by NYSED and/or the People of the State of New York beyond the money available for such purpose.
16. Contractor shall adhere to all federal, state and local laws, regulations and guidance regarding the procurement of goods and services for Child Nutrition Program purposes.
17. Contractor agrees to comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired after November 6, 1986, who will perform any labor or services under this Agreement.
18. Contractor shall comply with Section 102(c) which amended section 9 of the NSLA (42 U.S.C. 1758) by adding subsection (h) to require schools participating in the NSLP or the SBP to obtain food safety inspections conducted by a State or local governmental agency responsible for such inspections at least twice a year if a State or local governmental agency does not otherwise require inspections.
19. Where applicable, plain potable water must be available to students free of charge in the place where Child Nutrition Program meals are served in accordance with CNP laws, regulations, policy and guidance.

20. Contractor must ensure that the overall revenue from non-program foods is proportional to the cost of obtaining these foods. If non-program foods are purchased with the non-profit school food service account, all revenue must accrue back to the account.
21. Contractors are required to promote the availability of all Child Nutrition Program.
22. Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department, shall if such funds, assets, or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or both; or if such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties.
23. Contractor agrees to cooperate fully in studies and evaluations conducted by or on behalf of NYSED, USDA or their authorized representatives or outside Contractors related to Programs authorized under the Acts.
24. Contractor agrees to cooperate fully with all reporting requirements as prescribed by NYSED and USDA in a manner and format prescribed by NYSED or USDA.
25. Contractor agrees that any sign-on and password information provided to Contractor for use of NYSED'S Child Nutrition Management System (CNMS) will be used solely by the Contractor or the Contractor's duly authorized representative only and Contractor will perform edit checks and maintain confidentiality safeguards in accordance with CNP laws, regulations, policy and guidance.
26. The Contractor agrees that it will submit to NYSED monthly, in a manner proscribed by NYSED, a report of program operations and claim for reimbursement for the previous calendar month. Reimbursement shall be claimed for only those meals meeting the reimbursement requirements as specified in this Agreement and program law, regulations and policy. The report shall include the following information for each school participating in each CNP, including a summarization of the information for all schools and each CNP (e.g. - lunch, breakfast, snack, etc.):
 - (a) enrollment
 - (b) the number of eligible free, reduced price and paid students
 - (c) the number of days reimbursable meals were served
 - (d) the number of meals sold to children at the full price
 - (e) the number of meals sold to eligible children at the approved reduced price
 - (f) the number of meals served to free eligible children
 - (g) such other information as NYSED shall prescribe.
27. The Contractor agrees that it will submit to NYSED as required, in a manner and format prescribed by NYSED, the following program financial data, summarized for all schools and

summarized for all CNPs:

- (a) cost of all food used, including milk
- (b) cost of personal services, including the fringe benefits (accrued or paid)
- (c) all other program costs
- (d) indirect program costs (accrued or actual)
- (e) income from sales of reimbursable lunches to children (full and reduced price)
- (f) income from sales of breakfasts to children (full and reduced price)
- (g) income from reimbursable lunches
- (h) income from all other cafeteria sales and functions
- (i) the value of donated goods and services from local sources
- (j) General Fund transfers to Cafeteria Fund
- (k) complete and accurate financial data attributable to program operations, and
- (l) such other information as NYSED shall prescribe.

I. RECORD RETENTION

1. The Contractor agrees that it will maintain full and accurate records of all CNP operations and documentation supporting CNP operations and participation pursuant to this Agreement and CNP laws, regulation and policy. These records must be maintained for a period of three (3) years after the end of the fiscal year to which they pertain and must be readily retrievable or immediately available upon request whether such request is due to an announced or unannounced CNP review. This paragraph shall not be construed to reduce the period for which records are required to be kept by other provisions of law or regulations.

2. Upon request, make all accounts and records pertaining to its school food service immediately available to USDA, NYSED or any other authorized entity, for audit or review whether such audit or review is announced or unannounced. Such records shall be retained for a period of 3 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 3 year period as long as required for resolution of the issues raised by the audit;

3. Maintain files on site of currently approved and denied free and reduced price applications which must be readily retrievable by the school in the event that NYSED, USDA or any other authorized entity requests such records whether at an announced or unannounced audit, review or CNP visit;

4. Maintain files of the names of children currently approved for free meals through direct certification with the supporting documentation, as specified in 7 CFR §245 or other Federal or State administrative programs or in accordance with other federal or State CNP demonstration projects, which must be readily retrievable by the school in the event that NYSED, USDA or any other authorized entity requests such records whether at an announced or unannounced audit, review or CNP visit. Documentation for direct certification must include information obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by NYSED or USDA, including but not limited to:

(a) A child in the *Family*, as defined in 7 CFR §245.2 of this chapter, is receiving benefits from *SNAP, FDPIR, TANF or MEDICAID* as defined in 7 CFR §245.2 of this chapter; if one child is receiving such benefits, all children in that family are considered to be directly certified;

(b) The child is a homeless child as defined in 7 CFR §245.2 of this chapter;

(c) The child is a runaway child as defined in 7 CFR §245.2 of this chapter;

(d) The child is a migrant child as defined in 7 CFR §245.2 of this chapter;

(e) The child is a Head Start child as defined in 7 CFR §245.2 of this chapter; or

(f) The child is a foster child as defined in 7 CFR §245.2 of this chapter:

J. CLAIMS PAYMENT

1. NYSED will, subject to federal appropriation and availability to NYSED of sufficient funds for the applicable program, make program payment to Contractor in accordance with the terms of this Agreement. During any fiscal year, the reimbursement paid shall be established in conformance with applicable federal and state laws, regulations and policy. No reimbursement shall be made for performance under this Agreement occurring prior to (a) the beginning effective date of this Agreement or (b) a later date established by NYSED based on the date of receipt of a fully executed copy of this Agreement.

K. AUDITS

1. Contractor shall comply with the Uniform Federal Assistance Regulation (7 CFR Part 3015, as amended), Uniform Administrative Requirements For Grants and Cooperative Agreements To State And Local Governments (7 CFR Part 3016, as amended), as applicable, Uniform Administrative Requirements For Grants and Agreements With Institutions Of Higher Education, Hospitals, and Other Non-Profit Organizations (7 CFR Part 3019, as amended), as applicable, Audits of State, Local Governments, and Non-Profit Organizations (7 CFR Part 3052, as amended), the Office of Management and Budget (OMB) Super-Circular (A-87, A-122, A-133 consolidated in Title 2 CFR), all USDA instructions, policy memoranda, guidance and other written directives interpreting the laws and regulations applicable to the Program(s), state rules, regulations, policies and procedures as issued and amended by NYSED and all other federal, state or local laws applicable to CNPs administered by NYSED and fully incorporated herein by reference.

2. Contractor understands that acceptance of funds under this Agreement acts as acceptance of the authority of the USDA, NYSED, the Office of the New York State Comptroller (OSC) or any other authorized entity or successor agency, to conduct an investigation in connection with those

funds. Contractor further agrees to cooperate fully with USDA, NYSED, SED or any other authorized entity or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

L. GENERAL AGREEMENT TERMS

1. This Agreement shall take effect upon the signature of appropriately authorized and recognized representatives of the Contractor. For participation in NSLP, Snack, SBP or SMP, this Agreement shall continue in effect until June 30 of the same school year and is subject to renewal each year thereafter in manner and format prescribed by NYSED and in accordance with NYSED policies and procedures. For participation in the SFSP, this Agreement may be renewed on an annual basis in writing subject to approval of NYSED. Contractor acknowledges that is bound by the terms of this Agreement and any modifications or amendments to program laws, regulations or policy upon Contractor's subsequent renewal of this Agreement.
2. This Agreement may be terminated in accordance with the program laws and regulations, including 7 CFR Parts 3015, 3016, 3019 and 3052. In addition to termination in accordance with the preceding, this Agreement may be terminated for any of the following reasons:
 - a. Termination by mutual agreement of the Parties. This Agreement may be terminated by mutual agreement of the Parties. Such agreement must be in writing in accordance with NYSED policies and procedures.
 - b. Termination in the best interest of the State. NYSED may terminate this Agreement at any time when, in its sole discretion, NYSED determines that termination is in the best interest of the State of New York. The termination will be effective on the date specified in a notice of termination from NYSED.
 - c. Termination for non-appropriation of funds. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by NYSED are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then NYSED will have the right to terminate this Agreement at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding.
 - d. Termination for Change in Ownership or Legal Identity of Institution. Contractor understands and agrees that this contract is not transferable and that in the event of change in legal identity or ownership of Institution, this Contract will terminate.
 - e. Termination for impossibility or unreason ability. If federal, state or local laws or other requirements are amended or judicially interpreted so that the continued fulfillment of this Agreement, on the part of either party, is substantially unreasonable or impossible, or if the parties are unable to agree upon any amendment which would therefore be needed to enable the substantial continuation of the services contemplated by this Agreement then, the parties shall be

discharged from any further obligations created under the terms of this Agreement, except for the equitable settlement of the respective accrued interest of obligations, including audit findings, incurred up to the date of termination.

f. Termination by Contractor. A public school district is required to give 60-day notice to the NYSED Commissioner of Education (sent to the NYSED CNP Office) and parents or guardians of their intent to terminate the lunch Program so that all will have time to respond to the proposal. The 60-day time period begins when the district newsletter or directly-mailed notice is received by the parents or the date the distribution is made to students, depending on what method is used. A notice placed in a newspaper will not constitute “notice” for purposes of this requirement. The notice of Program termination, which schools are required to provide to the Commissioner of Education, can be accomplished by providing a letter from the President of the Board of Education to the CNP Office. The letter should state the date when termination is to occur, what method of parent or guardian notification has been or will be used and the reason the district is proposing this action. The CNP office must receive the notice of proposed termination within 15 days from the start of the 60-day period. Upon completion of the review of the notice of proposed termination, the school district will be notified of the approved date for termination no later than 30 days prior to the date the approval is granted. Non-public schools must send a letter on official letterhead notifying the CNP office of the effective date they will no longer participate and the last month they intend to claim meals.

M. AMENDED OR NEW LAWS, REGULATIONS, INSTRUCTIONS, POLICY MEMORANDA, AND GUIDANCE

1. By continuing to operate covered programs after the enactment or issuance of any changed or new laws or regulations applicable to the programs covered by this Agreement, and any changed or new instructions, policy memoranda, guidance, and other written directives interpreting these laws or regulations, Contractor agrees to comply with them. If Contractor does not wish to comply with any changes or new items, Contractor must seek to terminate this Agreement in accordance with the terms of this Agreement.

N. SEVERABILITY

1. If one or more provisions of this Agreement, or the application of any provision to either party or circumstance is held invalid, unenforceable or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

O. SIGNATURES

1. This Agreement establishes or continues the rights and responsibilities of NYSED and Contractor pursuant to Contractor's participation in one or more of the above named Programs as stipulated herein. By signing this Agreement, the Contractor is bound by its terms and conditions from its beginning effective date until terminated in accordance with this Agreement. Contractor certifies that all information submitted pursuant to this agreement is true and correct. Contractor understands that the deliberate misrepresentation or withholding of information is a violation of

this Agreement and may result in immediate suspension or termination of CNP participation and prosecution under applicable state and federal laws.

THEREFORE:

The Contractor hereto, agrees to all statements and conditions contained herein and the person signing this Agreement is authorized to sign this Agreement on behalf of the entity stated herein below. The Contractor affix its signature and binds itself for the faithful performance of the terms of this Agreement.