

**Commodity Supplemental Food Program  
Agreement Between Contracting Entity and the Texas Department of Agriculture**

The Texas Department of Agriculture (TDA) administers and operates the Commodity Supplemental Food Program (CSFP) by agreement with the United States Department of Agriculture (USDA). An agency or organization that is interested in receiving USDA Foods must submit to TDA for approval a completed Contract Packet, which includes the Application for Participation/Plan of Operation.

Upon signing this Agreement, Contracting Entity (CE) agrees to comply with the following terms and conditions:

**I. Agreement, Termination, and Payment**

- a. This Agreement specifies the rights and responsibilities of TDA and \_\_\_\_\_ Contracting Entity (CE) (collectively, the Parties) as participant in the Commodity Supplemental Food Program (CSFP).
- b. By signing this Agreement, the Parties are bound by its terms and conditions until its ending date, unless terminated earlier in accordance with this Agreement. This Agreement may be terminated under the following circumstances: (1) for cause by either party; (2) by mutual consent of both parties; (3) by either party upon 30 days written notice to the other party, or (4) notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by TDA are at any time not available or are insufficient, through failure of any entity to appropriate funds or otherwise, then TDA will have the right to terminate this Agreement at no additional cost and with no penalty whatsoever by giving written notice documenting the lack of funding.
- c. If Federal or State 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 that 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.
- d. TDA will, subject to Federal appropriation and availability to TDA of sufficient funds, provide program payment to the CE in accordance with the terms of this Agreement. 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 TDA based on the date of receipt of a fully executed copy of this Agreement.

**II. Term**

This Agreement shall take effect on \_\_\_\_\_, 20\_\_\_\_, or upon signature by both parties, whichever is later, and shall end only when it is terminated by one or both parties.

### III. Program Administration and Financial Management

- a. CE will comply with 7 Code of Federal Regulations (CFR) Parts 247 and 250, as amended; 2 CFR Part 200; and State policies and procedures as issued and amended by TDA.
- b. CE will perform as described in its Contract Packet (including supporting documents, and any approved amendments).

### IV. Contracting Entity Roles and Responsibilities Related to Use, Storage, and Disposition of USDA Foods

#### Upon execution of this Agreement, CE shall:

- a. Comply with all requirements for receiving, distributing, transporting, and storing USDA Foods as provided in this Agreement; TDA policy; and USDA regulations and instructions, including requirements relating to 1) dry, chilled, and frozen product received directly from USDA and 2) food safety and food recall procedures.
- b. Assume full responsibility for compliance with Federal regulations; State rules and policies; the requirements of this Agreement; any amendments executed by the Parties; and any addenda which may be required by TDA.
- c. Promptly provide to TDA any updated information pertinent to this Agreement, in writing.
- d. Fairly and equitably distribute USDA Foods, as food packages, only to persons (or, if applicable, to subdistributing agencies), who have been certified as eligible to participate in the CSFP.
- e. Ensure that all food packages containing USDA Foods comply with CSFP requirements and the approved food package guide rate.
- f. Distribute USDA Foods to help meet the nutrition needs of elderly persons.
- g. Prevent and detect dual participation by ensuring that the applicant signs Form H1504, *Participant Application*, which includes a statement advising the applicant that they may not receive CSFP benefits at more than one CSFP site at the same time.
- h. Request USDA Foods only in amounts that will be properly stored and fully utilized without waste.
- i. Do not sell, trade, or dispose of USDA Foods without TDA approval.
- j. Do not require USDA Foods recipients or, if applicable, subdistributing agencies, to pay for USDA Foods in money, materials, or service.
- k. Avoid reducing the amount of food received from other sources as a result of the receipt of USDA Foods.
- l. Provide adequate facilities and personnel to handle, store, safeguard, and distribute USDA Foods.
- m. Enter into agreements with subdistributing agencies that distribute USDA Foods which include responsibilities for compliance with Federal regulations; State rules and policies; and terms and conditions similar to the applicant organization's agreement with TDA, including the requirements of this Agreement, and any amendments and/or addenda.

- n. Require subdistributing agencies to adhere to requirements for: (a) maintaining program information, (b) certifying the eligibility of applicants who apply for USDA Foods, (c) training subdistributing agencies staff and volunteers, (d) maintaining confidentiality of household information, (e) monitoring and reviewing subdistributing agencies' compliance with program requirements as provided in Federal regulations, State rules, and policies at each site where USDA Foods are stored or distributed, and (f) notifying CSFP applicants and participants of their right to a fair hearing.
- o. CE agrees to integrate nutrition education into CSFP operations and to provide nutrition education that can be easily understood by participants. The information shall be related to their nutritional needs and household situations. Nutrition education must account for ethnic and cultural characteristics whenever possible and must include the nutritional value of CSFP foods and their relationship to the overall dietary needs of the population groups served; nutritious ways to use CSFP foods; special nutritional needs of participants and how these needs may be met; for pregnant and postpartum women, the benefits of breastfeeding; the importance of health care and the role nutrition plays in maintaining good health; and the importance of the use of the foods by the participant to whom they are distributed, and not by another person.
- p. CE agrees to provide information to participants on other health, nutrition, and public assistance programs, and make referrals, as appropriate. CE agrees to advise participants of the importance of health care and where low-income persons can obtain such care; to provide women, infants, children applicants and elderly applicants with written information on public assistance programs for which they may be eligible; and to make referrals, as appropriate.

**V. Contracting Entity Roles and Responsibilities Related to Accountability and Reporting**

**Upon execution of this Agreement, CE shall:**

- a. Allow TDA and USDA to inspect, at any reasonable time, the USDA Foods in storage and the facilities used for handling and storing USDA Foods.
- b. Obtain the signature of sites' representative showing the receipt of USDA Foods (if the foods are not distributed immediately) and maintain the receipts, as well as all other program records, for a minimum of three years following either the end of the Federal fiscal year in which services were provided or the expiration or termination date of a contract, or for a period greater than three years, if necessary, to resolve any litigation, claims or audit findings.
- c. Collect, from sites, certain data including, but not limited to, reports about the number of individuals served.
- d. 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 service under this contract.
- e. Maintain a perpetual inventory of USDA Foods, annually conduct a physical inventory of USDA Foods, and submit the inventory report to TDA.
- f. Review storage facilities that house USDA Foods and maintain a record of findings in conjunction with the annual physical inventory or as otherwise required by TDA.

- g. Comply with TDA policies and instructions for conducting financial and compliance audits. Additionally, comply with the audit requirements by obtaining an organization-wide audit for those fiscal years in which audit criteria apply.
- h. Train staff members before they assume any CSFP duty at one or more distribution, storage, or certification sites; train each staff member during each year thereafter, including, at a minimum, the required Civil Rights curriculum; document all staff training; and retain this documentation with your records.
- i. Maintain receipts, freight bills, notices of arrival, availability, and issuance of USDA Foods; inventory control sheets and storage facility review records (including inventory sheets and review records for leased storage space); and financial and supporting documents, statistical records, and other records pertinent to the services for which a claim was submitted.
- j. Keep records of nonexpendable property acquired under the contract for three years after the final disposition of the property.
- k. Provide to TDA, at the time of a TDA review or at TDA's request, a copy of the current health inspection certificate and current pest control records for the CE's storage facilities, if applicable.
- l. Obtain information from sites including, but not limited to, the following: 1) the number of households served; 2) the data and method used to determine the number of participants; 3) the number of participants. Submit to TDA upon request.

## **VI. Contracting Entity Roles and Responsibilities Related to Misuse of USDA Foods**

### **Upon execution of this Agreement, CE:**

- a. Shall reimburse TDA, according to TDA procedures, for any improper distribution or use of USDA Foods, or for any loss of, or damage to, USDA Foods caused by CE's fault or negligence.
- b. Acknowledges that any misuse of USDA Foods may cause CE's disqualification from the CSFP, and that reinstatement is at TDA's discretion.
- c. Acknowledges that embezzlement, misuse, theft, or obtainment by fraud of USDA Foods or, as applicable, funds related to USDA Foods, shall cause CE to be subject to Federal or State criminal prosecution.
- d. Certifies that CE and its subdistributing agencies, if any, have and preserve a right to assert claims against other persons, agencies, and organizations to whom USDA Foods are delivered for care, handling, or distribution. Furthermore, CE may take action to obtain restitution in connection with claims for improper distribution, use, loss, or damage to USDA Foods.

## **VII. Certifications**

- a. CE's annual payment of Texas franchise taxes is current if the CE is subject to the State of Texas franchise tax. A false statement regarding franchise tax status shall be treated as a material breach of this Agreement and may be grounds for termination of this Agreement at the option of TDA.

- b. That neither the CE nor its principals are presently debarred, suspended, or proposed for debarment; or are declared ineligible or voluntarily excluded from participating in this Agreement by any Federal department or agency or by the State of Texas. CE shall immediately provide written notice to TDA if at any time the CE learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. CE may rely upon a certification or a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the CE knows that the certification is erroneous.
- c. That CE does not owe a single substantial debt or a number of outstanding debts to a Federal or State agency. A false statement regarding the CE's status will be treated as a material breach of this Agreement and may be grounds for termination of this Agreement at the option of TDA.
- d. That if the CE is a corporation, it is a non-profit, tax-exempt corporation.
- e. Under Texas Family Code § 231.006, a child support obligor who is more than 30 days delinquent in paying child support or a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments under this Agreement. Under Section 231.006, Texas Family Code, CE certifies that the individual or business entity named in this Agreement, and any individual who is a partner, shareholder or owner with at least 25% interest in the business entity, is not ineligible to receive the specified grant, loan, or payment, and acknowledges that this contract may be terminated if this certification is inaccurate.

**Upon execution of this Agreement, CE certifies understanding of and compliance with the following:**

- f. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CE, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- g. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an officer or employee of a Member of Congress in connection with this Federal contract, contract, grant, loan, or cooperative agreement, the CE shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- h. The CE shall require that the language of this certification is included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- i. The CE understands that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this

certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- j. This certification is made in consideration of, and for the purpose of, obtaining the following:
  - i. Any and all Federal financial assistance
  - ii. Grants and loans of Federal funds
  - iii. Grants or donations of Federal property
  - iv. Reimbursable expenditures
  - v. Interest in property
  - vi. The detail of Federal personnel
  - vii. The sale and lease of Federal property
  - viii. The permission to use Federal property or interest in such property
  - ix. The furnishing of services either without consideration, at nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient
  - x. Recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient
  - xi. Any improvements made with Federal financial assistance extended to the CSFP applicant by TDA, including any Federal agreement, arrangement, or other contracts that have one of the following purposes:
    - 1. The provision of cash assistance for the purchase of food
    - 2. Cash assistance for purchase or rental of food service equipment
    - 3. Any other financial assistance extended in reliance on the representation and agreements made in this certification.
- k. Compliance with drug-free workplace requirements in 2 CFR Part 421, which adopts the Government-wide implementation (2 CFR Part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

#### **VIII. Contracting Entity Roles and Responsibilities Related to Information Technology**

CE agrees to implement the following information technology standards to ensure the confidentiality of participant information.

- a. Network Security
  - 1. Maintain network security which includes the use of a firewall, unique usernames, and passwords to access network resources.

2. Provide maintenance of a secure processing environment, including, but not limited to, the timely application of patches, fixes, and updates to operating systems and applications.
- b. Data Security
1. Preserve the confidentiality, integrity, and accessibility of participant information in motion or at rest with administrative, technical, and physical measures that conform to generally recognized industry standards and best practices.
- c. Data Storage
1. Any and all participant information will be stored, processed, and maintained solely on designated computers and servers.
  2. No participant information will be transferred to any portable or laptop computing device or any portable storage medium unless that device or storage medium is in use as part of CE's designated backup and recovery processes and is encrypted in accordance with the Data Encryption provision below.
- d. Data Transmission
1. Any and all electronic transmission or exchange of system and application data with TDA shall take place via secure means (HTTPS or SFTP or equivalent).
- e. Data Encryption
1. Store all participant information, including data defined as personally identifiable information under current regulations, in encrypted form using a commercially supported encryption solution. Further, any and all data is likewise encrypted.
  2. Encryption solutions will be deployed with no less than a 128-bit key.
- f. Data Re-Use
1. Any and all participant information exchanged shall be used expressly and solely for the purposes enumerated in the Agreement and in the CSFP Handbook.
  2. Participant information shall not be distributed, repurposed, or shared across other applications, environments, or business units of CE.
  3. No participant information of any kind shall be transmitted, exchanged, or otherwise passed to other interested parties except as specifically required to operate the CSFP on a need-to-know basis. Any other release of participant information requires specific agreement in writing by TDA.
- g. End of Agreement Data Handling
1. Notwithstanding the recordkeeping and retention requirements in this Agreement, CE agrees that, upon the termination of the Agreement, it shall erase, destroy, and render unrecoverable all participant information. The CE shall certify in writing that these actions have been completed within 30 days of termination of this Agreement or within seven days of the request of an authorized TDA official, whichever comes first.

h. Security Breach Notification

1. Comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personal identification information or other event requiring notification.
2. In the event of a breach of any of CE's security obligations or other event requiring notification under applicable law, CE agrees to notify all of the following:
  - i. USDA Foods Section  
Texas Department of Agriculture  
CommodityOperations@TexasAgriculture.gov
  - ii. CIO / Information Security Officer  
Texas Department of Agriculture  
1-800-TELL-TDA (1-800-835-5832)
  - iii. Assistant Commissioner for Food and Nutrition  
Food and Nutrition Division  
Texas Department of Agriculture  
1-800-TEX-MEAL (1-877-839-6325)

**IX. Fair Hearings**

**This section of the Agreement provides appeal rights for fair hearings, as described herein:**

- a. Actions subject to appeal: Pursuant to 7 CFR 247.33, the following adverse actions are subject to appeal: (1) denial or discontinuance of program benefits; (2) disqualification from the program; (3) a claim to repay the value of commodities received as a result of fraud. The expiration of a program participant's certification period is not subject to appeal.
- b. Parties capable of taking adverse action: TDA, each CE administering the program, and any subdistributing agency have the administrative authority to take adverse action against program applicants or participants. In the event that any adverse action taken by any entity participating in the CSFP in Texas is subject to appeal, TDA will control and conduct the subsequent fair hearing, as defined here.
- c. Notice of adverse action: Any entity taking an adverse action shall provide written notice. Such notice shall: (1) state the cause for the action; (2) state the effective date of the action; (3) state whether the action shall be postponed if it is appealed; (4) state the procedure for requesting an appeal; (4) state that a timely request for an appeal must be received within 60 days of the date of the adverse action notice.
- d. Request for appeal: An individual, or an individual's caretaker, may request an appeal by making a clear expression, verbal or written, to a state or local agency official that an appeal of the adverse action is desired.
- e. Denial of request for appeal: A request for appeal may be denied by TDA (1) if the request is not received within 60 days of the date of the written notice of adverse action; (2) if the request for appeal is withdrawn by the individual requesting the appeal or an authorized representative of the individual; or (3) if the individual fails to appear, without good cause, for the scheduled hearing.



- f. Submission of requests for appeal:
  - 1. Requests for appeal may be mailed or faxed to: Texas Department of Agriculture, Legal Division, Attn: Docket Clerk; PO Box 12847; Austin, Texas; 78711; Fax Number (800) 909-8530.
  - 2. Requests for appeal may be sent via overnight delivery service to: Texas Department of Agriculture; Legal Division, Attn: Docket Clerk; 1700 North Congress Avenue, 11<sup>th</sup> Floor, Austin, Texas 78701.
- g. Notice of hearing: TDA will provide an individual with at least ten (10) days' advance written notice of the time and place of the hearing and will include the rules of procedure for the hearing, as codified in 4 Texas Administrative Code § 1.1052.
- h. Hearing:
  - 1. The individual must have the opportunity to (1) examine documents supporting the appealed action before and during the hearing; (2) be assisted or represented by an attorney or other persons; (3) bring witnesses; (4) present arguments; (5) question or refute testimony and evidence, including confront and cross-examine others at the hearing; and (6) submit evidence to help establish facts and circumstances.
  - 2. TDA will issue a written decision to all parties involved within forty-five (45) days of receiving the request for appeal.
  - 3. The TDA hearing official will make a decision that complies with Federal laws and regulations and is based on the facts in the hearing record. The written decision will summarize the facts of the case; specify the reasons for the decision; identify the evidence supporting the decision; and identify the laws or regulations that the decision upholds.
  - 4. The decision made by the hearing official is binding on all parties.
  - 5. The hearing record must include a transcript or recording of testimony, or official report of all that transpired at the hearing, along with all exhibits, papers, and requests made. The record will be maintained by TDA and made available for public inspection and copying, in accordance with the provisions of 7 CFR 247.36(b).

## **X. Civil Rights**

- a. By executing this Agreement, CE agrees to comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that act and the regulations. The CE also shall comply with Section 504 of the Rehabilitation Act of 1973 (public Law 93-112), the Americans with Disabilities Act of 1990 (public Law 101-336), Title IX of the Education Amendments of 1972 (7 CFR Part 15a), the Age Discrimination Act of 1975 (Public Law 94-135), all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts. These provide in part 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, or denied any aid, care, service or other benefits provided by Federal and/or State funding, or otherwise be subjected to discrimination.

- b. Additionally, Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 CFR, Part 80 or 7 CFR, Part 15, prohibits a CE from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities, on the basis of national origin. Also, 7 CFR 247.37 requires CEs to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Accordingly, the CE agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs and activities, on the basis of national origin. The CE also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can effectively participate in and benefit from its programs. The CE accepts final administrative responsibility for ensuring that its subcontractors take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can effectively participate in and benefit from that subcontractor's programs and services.
- c. Compile data, maintain records, and submit reports as required, to permit effective enforcement of the above Acts; and permit authorized TDA and USDA personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with the above Acts. If there are any violations of this assurance, TDA and USDA have the right to seek judicial enforcement of this assurance. This assurance is binding on the CE, its successors, transferees, and assignees during the term that it receives assistance, or retains possession of any assistance from TDA. The person whose signature appears on this Agreement is authorized to sign this assurance on behalf of the CE.
- d. Ensure that civil rights training is provided to subdistributing agencies according to TDA guidelines.

**XI. Signatures**

We, the undersigned, do hereby make and enter into this Agreement. Upon signing this Agreement, the CE official establishes that he or she has the authority to enter into a written agreement with TDA. This Agreement contains all the terms and conditions agreed upon by the Parties. CE certifies that the information contained in this document is true and correct to the best of its knowledge and is provided for the purpose of obtaining Federal assistance. CE shall comply with the Federal regulations, and State policies and procedures as issued and amended by TDA. CE understands that the deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal laws.

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| Name of CE   |  |
| Address of CE  |  |
| Name of CE's Authorized Representative (type or print) | _____<br>Signature of CE's Authorized Representative      Date |
| Title of CE's Authorized Representative                |  |
| Name of TDA's Representative (type or print)           | _____<br>Signature of TDA's Representative      Date           |
| Title of TDA's Representative                          |  |