

## **AGREEMENT**

**THIS AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (“Buyer”), having offices located at \_\_\_\_\_, and [Seller’s name] (“Seller”), having offices located at [\_\_\_\_\_] (“Seller”).

In consideration of the mutual covenants and agreements contained herein, the sufficiency of which consideration is acknowledged, Buyer and Seller agree that Seller shall sell to Buyer and Buyer shall buy from Seller the goods and/or services described below, on the terms and conditions stated below.

### **SUMMARY OF KEY TERMS**

**Goods:** See goods described in Regional Education Services Center Alliance Food Trust RFP #026-007 Frozen Grocery, or Snack Products and Seller Proposal (the “Proposal”) submitted in response thereto, both of which are incorporated herein by reference and attached hereto.

- **Contract Sum:** See Pricing Sheet submitted by Seller in its Proposal

**This Summary of Key Terms is subject to the Standard Terms and Conditions of Purchase (including Buyer’s Insurance Requirements) attached hereto and made a part hereof (“Standard Terms”). This Summary of Key Terms, including all Exhibits and the Standard Terms, shall constitute and be referred to as the “Contract.”**

**To the extent of any conflict between the Contract and any other document, the Contract shall prevail.**

**SELLER:** \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Date signed: \_\_\_\_\_

**BUYER:** \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Date signed: \_\_\_\_\_

## **STANDARD TERMS AND CONDITIONS OF PURCHASE**

These Standard Terms and Conditions of Purchase (“Standard Terms”) apply to all contracts or agreements between Buyer and any Seller for the purchase and sale of goods or services. In the case of any conflict between any of the terms stated below and terms contained in a Main Contract (as defined below), the latter shall control. These Standard Terms shall supersede any conflicting terms stated in any proposal, quote or other document delivered by Seller, which conflicting terms Buyer does not accept.

(1) Definitions:

The following capitalized terms shall have the following meanings:

“Buyer” means \_\_\_\_\_.

“Contract” means a “Main Contract” together with these Standard Terms.

“Contract Sum” means the fixed and total amount of compensation due Seller for the Goods or Services and includes all costs and expenses to perform the Services or provide the Goods.

“Goods and/or Services” means the Goods and/or Services that are the subject of a Main Contract.

“Main Contract” means the above Summary of Key Terms together with an exhibits referenced therein.

“Seller” means Buyer’s counterparty to a Contract.

(2) Purchase of Goods and Services. Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer the Goods and/or Services described in the Main Contract.

(3) Seller’s Obligations.

(a) Time of Performance. Seller shall perform the Services and/or deliver the Goods in a timely and diligent manner, and in strict accordance with the time for performance, if any, stated in the Main Contract. If no time for performance is stated, Seller shall perform its obligation within a reasonable time. Time is of the essence under the Contract.

(b) Seller Resources and Personnel; Subcontractors. Seller shall provide at its expense the facilities, equipment, materials, services, and other resources necessary to deliver the Goods and/or perform the Services. Seller is responsible for the acts and omissions of Seller personnel under or relating to this Contract. Buyer has the right to reasonably approve all Seller personnel assigned to perform Services. Buyer may require Seller at Seller’s expense to immediately replace any Seller personnel whose performance, in Buyer’s reasonable judgment has been unsatisfactory.

(c) Compliance. Seller shall comply with and shall perform the Services, and cause the Goods to be, in compliance with all applicable laws, regulations, ordinances or governmental orders. Seller shall obtain all necessary permits or governmental approvals required to perform the Services or to make and/or deliver the Goods.

(4) Buyer Obligations. Buyer will facilitate Seller’s delivery of the Goods and/or performance of the Services and perform any other tasks required of it under the Contract (“Buyer Responsibilities”). Seller’s failure to perform its obligations under the Contract may be excused only to the extent that (a) such nonperformance results solely from Buyer’s failure to perform any Buyer Responsibilities, (b) Seller is

otherwise in full compliance with its obligations under the Contract, (c) Seller provides Buyer with reasonable advance notice of Seller's inability to perform contractual obligations, and (d) Seller delivers to Buyer a detailed written explanation setting forth how Buyer's failure to perform Buyer Responsibilities prevented Seller's performance.

(5) Contract Sum and Payment. Unless otherwise specified in the Main Contract, Seller shall invoice Buyer on a monthly basis for Goods delivered to or for Services performed based upon the Contract Sum. Buyer shall pay invoices within forty-five (45) days of the date of Buyer's receipt of an invoice in form and substance acceptable to Buyer.

(6) Delivery. Goods shall be delivered to and/or Services shall be performed at the location designated in the Main Contract or as otherwise designated by Buyer (the "Designated Location"). All Goods shall be subject to Buyer's inspection during the ten (10) day period following delivery to the Designated Location. Seller assumes all risk of loss to the Goods until they are delivered to the Designated Location. Title to the Goods will pass to Buyer upon receipt at the Designated Location. If any of the Goods are lost or destroyed prior to title passing to Buyer, Buyer may either cancel the entire Contract or the affected part of the Contract (at Buyer's option), or require Seller to deliver, at Seller's expense, substitute Goods of equal quantity and quality as soon as commercially practicable. If loss of the Goods is partial and Buyer does not cancel the entire Contract, Buyer may require Seller to deliver the Goods not lost or destroyed in accordance with the terms of the Contract.

(7) Use and Ownership of Materials/Goods. If the Contract requires Seller to prepare materials for Buyer, including written materials, such materials shall be the property of Buyer. Seller grants Buyer a non-exclusive license to any intellectual property rights owned by Seller associated with the Goods or Services solely for Buyer's use of the Goods or Services. Seller agrees to indemnify and save Buyer harmless from and against any liability or damages, including attorneys' fees, arising out of any alleged infringement or violation of any trademarks, patents, copyrights, trade secrets or other third-party property rights. Seller warrants and represents that it owns all right, title and interest in and to the Goods or Services. Seller further warrants that the Goods are free from any and all security interests, claims, demands, liens or other encumbrances.

(8) Changes. Buyer and Seller may amend or modify the Contract only by written agreement signed by Buyer and Seller.

(9) Warranty. Seller warrants to Buyer that the Goods shall materially conform to description in the Contract and shall be free from defects in material and workmanship. For a period of 12 months from Buyer's first use of the Goods, Seller shall repair or replace, at its expense, including any installation or transportation costs, any defective or nonconforming Goods. For the avoidance of doubt, the foregoing is not intended to limit in any way Buyer's rights and remedies for breach of the Contract or the time within which legal action to enforce Buyer's rights under the Contract may be commenced. Buyer's inspection or acceptance of the Goods shall not relieve Seller of its warranty obligations. If Seller fails to perform its repair or replacement obligations within a reasonable time, or in the event of an emergency, Buyer may perform such repair or replacement of the warranted Goods at Seller's expense.

(10) On-Site Activities. At any time while Seller is on Buyer's property, Seller shall comply with all of Buyer's workplace requirements.

(11) Insurance/Indemnity.

(a) Seller shall maintain insurance as set forth on the document entitled Buyer Insurance Requirements (or similar document) attached hereto as **Schedule 1**. Seller waives and must

require (by endorsement or otherwise) all its insurers to waive subrogation rights against Buyer and other additional insureds for losses paid under insurance policies required under the Contract.

(b) Seller shall indemnify, defend at its expense and save Buyer and its respective officers, directors, trustees, agents and employees from any damages, liabilities, costs and claims, including without limitation Buyer's attorneys' fees and costs, which arise from Seller's negligence, willful acts or omissions or breach of Seller's obligations under the Contract.

(12) **Term/Termination/Suspension.** The term of the Contract shall begin on the Contract is entered into and shall end on the last delivery of the Goods or final performance of the Services. For the avoidance of doubt, Seller's warranty, insurance and indemnity obligations shall survive termination of the Contract. Buyer may, for its convenience, terminate or suspend all or part of the Contract upon written notice to Seller. Upon termination, Seller shall immediately stop work on the terminated portion of the Contract and shall submit to Buyer an invoice with supporting documents setting forth the Contract Sum for the Goods delivered, or Services performed prior to the notice of termination. Buyer shall not be liable to Seller for Seller's lost profit on the terminated portion of the Contract or Seller's costs resulting from termination. Seller may terminate the Contract only if Buyer fails to pay Seller undisputed invoices under the Contract within 45 days of the due date and fails to pay the amount due within 30 additional days after Buyer receives notice from Seller; provided, however, Seller may only terminate if at the time of non-payment Seller was in substantial compliance with the Contract.

(13) **Limitation of Liability.** Buyer's aggregate liability to Seller under the Contract shall not exceed under any circumstances that portion of the Contract Sum that has not been paid by Buyer under the Contract.

(14) **Waiver of Consequential Damages.** Neither party shall be liable to the other for any indirect, incidental or consequential damages.

(15) **Waiver of Jury Trial.** Buyer and Seller waive any right to trial by jury in any legal action arising under the Contract.

(16) **Confidentiality.** Seller agrees to keep the confidential or proprietary information of Buyer that Seller receives or becomes aware of in connection with the Contract ("CI") in the strictest confidence and not to disclose any CI to any party other than as required by law. Upon Buyer's request, Seller will return all documents containing CI and retain no copies thereof. Seller agrees that its obligation to protect CI is ongoing and shall not cease upon completion or termination of the Contract.

(17) **Equal Opportunity/Non-Discrimination.**

(a) Buyer is an equal opportunity employer and purchaser. The Seller agrees and warrants that in the performance of the Contract such Seller will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Seller that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Seller further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Seller that such disability prevents performance of the work involved.

(b) Seller agrees to provide each labor union or representative of workers with which Seller has a collective bargaining agreement or other contract or understanding or each Seller with which Seller has a contract or understanding, a notice to be provided by the Commission, advising the labor union or worker's representative of Seller's commitments pursuant to the Connecticut General Statutes (the "Statutes") Section 4a-60, and to post copies of the notice in conspicuous places available to employees and applicants for employment.

(18) Americans With Disabilities Act Of 1990. This clause applies to a Seller, which is or will come to be responsible for compliance with the terms of the Americans with Disabilities Act of 1990 (43 USCS Sections 12101-12189 and Sections 12201-12213) (Supp. 1993); 47 USCS Sections 225.611 (Supp. 1993) (the "Act"). During the Term, Seller represents that it is familiar with the terms of the Act and that it is in compliance with the Act. The Seller warrants that it will hold Buyer harmless from any liability, which may be imposed upon Buyer as a result of any failure of the Seller y to be in compliance with the Act. Where applicable, Seller agrees to abide by the provisions of Section 504 of the Federal Rehabilitation Act of 1973, as amended, 29 USC Section 794 (Supp. 1993), regarding access to programs and facilities by people with disabilities.

(19) Attorneys' Fees. The prevailing party in any dispute arising out of this Contract shall be entitled to recover from the other party reasonable attorneys' fees and costs.

(20) Miscellaneous. If any Contract term is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. Seller may not assign the Contract without Buyer's prior written consent. The Contract shall be governed by the laws of the State of Connecticut without regard to its conflict of laws provisions. Any legal action against Buyer arising under the Contract shall be brought only in state or federal court located in Hartford County, Connecticut.

## **SCHEDULE 1**

### **INSURANCE REQUIREMENTS**

The following minimum insurance requirements shall apply, provided that member districts of RAFT may impose greater or different insurance requirements. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverage of the Buyer's standard insurance policies, forms and endorsements. The contract award amount shall be determined based on estimated quantities or, if applicable, the dollar amount of sales to Buyer in the prior fiscal year.

If the Seller/Insured has self-insured retentions or deductibles under any of the following minimum required coverages, the Seller /Insured must identify on the certificate of insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be the Seller/Insured's sole responsibility.

- A. **Commercial General Liability:** With respect to the operations the Seller performs and also those performed for it by subcontractors, the Seller shall carry, and require each subcontractor to carry, Commercial General Liability insurance, including Contractual Liability, Products and Completed Operations, Broad Form Property Damage and Independent Contractors. See chart below for applicable minimum coverage amounts which shall be Buyer or the quantities estimated by Buyer.

**If the Contract amount is between 0 and \$2,000,000:**

- The Minimum Single Occurrence Amount required is \$1,000,000 and the Minimum Annual Aggregate Amount is \$2,000,000

**If the Contract amount is between \$2,000,000 and \$10,000,000:**

- The Minimum Single Occurrence Amount required is \$2,000,000 and the Minimum Annual Aggregate Amount is \$4,000,000

**If the Contract amount is >\$10,000,000:**

- The Minimum Single Occurrence Amount is \$4,000,000 and the Minimum Annual Aggregate Amount is \$8,000,000

- B. **Automobile Liability:** The Seller/ Insured shall maintain business auto liability insurance with minimum limit of \$1,000,000 combined single accident covering the operation of all motor vehicles, including those hired or borrowed, that are used in connection with the Project and/or services for all damages arising out of bodily injury to or death of all persons and/or injury to or destruction of property. This policy shall not be subject to an annual aggregate limitation.

- C. **Worker's Compensation:** With respect to all operations the Seller performs and all those performed for it by subcontractor, the Seller shall carry, and require each subcontractor to

carry, Worker's Compensation insurance as required by the laws of the State of Connecticut.

Employer's Liability insurance shall be provided in amounts not less than:

- \$500,000 per accident for bodily injury by accident;
- \$500,000 policy limit by disease; and
- \$500,000 per employee for bodily injury by disease

- D. **Owner's and Contractor's Protective Liability Insurance for and in the Name of the Town and/or State:** With respect to the Seller's Project operations and also those of its subcontractors, the Seller shall carry, for and on behalf of the Town and/or State for each accident or occurrence resulting in damages from bodily injury to or death of persons and/or injury to or destruction of property. See chart below for applicable minimum coverage amounts.

**If the Contract amount is between 0 and \$2,000,000:**

- The Minimum Single Occurrence Amount required is \$1,000,000 and the Minimum Annual Aggregate Amount is \$2,000,000

**If the Contract amount is between \$2,000,000 and \$50,000,000:**

- The Minimum Single Occurrence Amount required is \$2,000,000 and the Minimum Annual Aggregate Amount is \$4,000,000

**If the Contract amount is >\$50,000,000:**

- The Minimum Single Occurrence Amount is \$4,000,000 and the Minimum Annual Aggregate Amount is \$8,000,000

- E. **Excess Coverage:**

For contracts valued under \$250,000, the Seller shall purchase and maintain excess or umbrella liability insurance with a limit of not less than \$1,000,000, covering all lines of insurance required by this contract.

For contracts with a value of \$250,000 or more, the Seller shall purchase and maintain excess or umbrella liability insurance with a limit of not less than \$5,000,000, covering all lines of insurance required by this contract.

**The Seller/Insured must carry insurance under which both the applicable school district or municipality must be named additional insured for the duration of the work/contract and noted on the Certificate of Insurance.**