

SCHOOL YEAR 2002-2003
MASTER AGREEMENT

Agreement is made by and between the Department of Agriculture, Food and Nutrition Service and the following processing (Processor) company:

Company Name	_____
Company Representative	_____
Address	_____
City, State, Zip Code	_____
Contact Person	_____
Telephone	_____
Fax	_____
E-Mail	_____

and is made with respect to the following facts:

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

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

Plant Name	Street, City, State, Zip	Contact Person	Phone
#	Fax #		
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(For additional plants add an attachment)

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

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

1. AGREEMENT INTENT

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

2. CATEGORIES OF DONATED FOODS IN PROCESSING

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

A Substitutable - Such DF may be substituted, interchanged, or commingled in storage and production with a commercial food of the same generic identity and of equal or better quality. Butter, processed cheese, cheddar cheese, mozzarella cheese, corn grits, cornmeal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil spaghetti and such other DF as specifically approved by Food and Nutrition Service (FNS) shall be substitutable.

1) Processor shall maintain documentation that the commercial food interchanged, commingled, or substituted for the DF is:

- a. Of U.S. origin; and
- b. Identical or superior to the DF specification.

2) Processor may utilize substitutable DF in the manufacture of end product sold commercially, but shall not otherwise sell or dispose of the DF in bulk form. Should Processor elect to utilize a commercial food in anticipation of replacement with a DF, the RA or USDA cannot guarantee such replacement and assumes no liability for such replacement.

3) Processor must be able to demonstrate that purchases of commercial foods are sufficient to meet commercial production needs.

If use of concentrated skim milk to replace donated nonfat dry milk is approved by the USDA, the Processor must comply with 7CFR Part 250.30 (f)(3).

B. Nonsubstitutable - Donated food (DF) other than those listed in Article 2.A. shall not be interchanged, commingled or substituted with a commercial food that could be used in place of the DF in the product formulation. Meat and poultry may be substituted with specific approval by USDA. Other nonsubstitutable DF may be substituted with commercial product as described above in 2.A. with an approval from the FNS.

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

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

3. PROCESSING ARRANGEMENTS

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

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

A. Donated Food Value Pass-Through System

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

1) Direct Sales

a. Discount System

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

b. Refund System

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

(1) RA shall submit a refund application to the Processor within 30 Days from the end of the month of the date of delivery. RAs may submit refund applications to the processor on a quarterly basis if the total refund due is \$25 or less during the quarter.

(2) Within 30 days of the receipt of the refund application, Processor shall compute the amount and issue payment of refund directly to RA. Processors may issue payment of refunds on a quarterly basis if the total payment due to that RA is \$25 or less during the quarter. Sales cannot be reported and the inventory cannot be reduced until refunds are actually issued

(3) Copies of refund application and payment to RAs shall be forwarded to appropriate DA by the Processor with the monthly performance report.

2) Indirect Sales

a. Discount System (Hybrid System)

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

b. Refund System

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

3) Other Value Pass-Through Systems

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

B. Fee-For-Service System

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

- 1) The Processor delivers the end products directly to the RA or RA’s designee and bills the RA for the agreed upon fee for service.
- 2) Delivery is made by commercial distributors. Processor shall not sell end products directly to the distributor. Two options for arranging payment for end products are:
 - a. A dual billing system whereby the RA is billed by the Processor for the fee for service and the distributor bills the RA for storage and delivery of end products; or
 - b. Processor arranges for the delivery with a distributor for the RA. The Processor’s invoice must include both processing fee and the distributor’s charges as separate identifiable charges.

4. PROCESSOR SALES VERIFICATION

If delegated by USDA for discount sales made by distributors the Processor shall verify sales conducted under the terms of Article 3.A.2. and 3.A.3. Verification shall include a statistically valid sample of reported sales in a manner which ensures a 95 percent confidence level. All sales reported during a specific period shall be verified at least semiannually. The Processor shall verify that sales were made only to eligible RAs and that the value of DF was passed through to those RAs. Sales verification findings shall be reported as an attachment to the December and June performance reports in a format approved by the USDA. At the same time this report is submitted, the Processor shall submit to USDA a corrective action plan designed to correct problems identified in the verification effort. This plan will be subject to USDA approval. USDA may assess a claim against the Processor if, after review, it is determined that the value of DF has not been passed on to the RAs or if the end products were improperly distributed.

5. END PRODUCT DATA SCHEDULE

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

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

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

6. PACKAGING

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

7. LABELING

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

A. The exterior shipping container, and where practical the individual wrappings or containers within the exterior container, of end product containing nonsubstitutable DF as defined in Article 2.8. shall have clearly shown on the label the legend "Contains Commodities Donated by the United States (U.S.) Department of Agriculture. This product shall be sold only to eligible Recipient Agencies. " This requirement may be changed at the option of the USDA.

B. Processor shall obtain approval through procedures established by FNS in conjunction with the Food Safety Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, and National Marine Fisheries Service of the U.S. Department of Commerce, or other applicable federal agency for all labels which make any claim with regard to an end product's contribution toward meal requirements of any Child Nutrition Program.

C. Processor may be required to obtain a Child Nutrition (CN) label for all end products containing meat, poultry, fish or a meat alternate such as cheese or peanut butter. If a CN label is required the processor must: (1) submit a copy of the approved CN label to the USDA prior to requesting the USDA to order DF or picking up DF from RA; and (2) affix the CN label to each case of end product to be sold to eligible RAs.

8. QUALITY CONTROL (QC)

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

A. Processor shall transport DF picked up from DA or RA; receive, handle, store and deliver end product in a safe and sanitary manner and at the recommended temperature for the specific DF and end product covered by this Agreement.

B. Processor, with the concurrence of USDA may refuse to accept from the carrier for the account and disposition of the vendor or USDA any delivery of DF directly to the Processor s plant or to his authorized storage agent which does not meet the federal specifications under which it was purchased and shipped. Processor shall maintain a written plan for the receipt of donated foods to ensure that only wholesome food that complies with the Federal specifications is accepted for further processing.

C. All end product produced under this Agreement shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which Processor s plant is located or by the applicable federal standards, whichever are higher.

D. At the option of USDA, samples may be pulled from delivered end product for laboratory testing. Processor shall pay costs of such tests only if product sample tested fails to meet either Agreement specifications or quality and wholesomeness standards.

E. Processor shall maintain end product batch identification in the event end product is rejected upon delivery. USDA, DA, or RA designate shall reject end product failing to meet Agreement specifications or wholesomeness standards and Processor shall be so notified. Processor shall be given fifteen days time from this notice of rejection to negotiate removal of rejected product and replacement by acceptable end product. If agreement is not reached, the USDA or purchasing RA/DA shall have the right to purchase the same or similar product on the open market at Processor's expense. If Processor is unable to arrange removal of rejected product within a reasonable time, USDA shall proceed to authorize removal and destruction at Processor's expense.

9. INSPECTION AND GRADING REQUIREMENTS FOR PROCESSING

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

A. Continuous Wholesomeness Inspection - When donated meat or poultry products are processed or when commercial meat or poultry products are incorporated into an end product containing one or more DF, all processing shall be performed in plants under continuous inspection by FSIS personnel, or State meat and poultry inspection personnel in those states certified to have programs at least equal to the federal inspection program.

B. Acceptance Service Grading - All donated meat and poultry processing shall be performed under AMS acceptance service grading. FNS' minimum requirement is to verify nonsubstitution and nondiversion. Additional certification requirements may be requested as part of the EPDS. Under no circumstances shall Processor set up production runs for the purpose of circumventing this requirement.

- 1) The cost of this service shall be borne by the processor.
- 2) Exemptions in the use of acceptance service graders will be authorized by FNS on the basis of each order to be processed provided the Processor can demonstrate:
 - (a) that even with ample notification the Processor cannot secure the services of a grader;
 - (b) that the cost for a grader is unduly excessive, as determined per order by USDA, relative to the value of food being processed and that production runs cannot be combined or scheduled to enable prorating of the cost of services among the purchasers of end products; or
 - (c) that the documented urgency of the RA's need for the end product precludes the use of acceptance services

USDA reserves the right to verify Processor's claim for exemption.

- 3) Copies of all certification forms issued by AMS graders for donated meat or poultry processing shall be provided to DA with the monthly performance report.
- 4) At the option of USDA other DF may be required to be processed under the applicable federal acceptance service including the certification that a commercial food authorized to be substituted for a DF is identical or superior to the DF specifications.

10. RESERVED

11. DONATED FOOD CONTAINERS

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

12. BY-PRODUCTS OF DONATED FOOD PROCESSING

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

A. The by-product, if agreeable to the RA for which the DF was processed, shall be accumulated and returned in sanitary and wholesome manner to RA; or

B. At the option of USDA, Processor shall return to the DA or RA for which the DF was processed all funds received from the sale of salvageable by-product material minus any expenses incurred by the Processor to effect the sale. Return of such funds shall at the option of USDA be in the form of a cash payment or a reduction in the selling price of the end product based on the following:

- 1) The actual value received from the sale of the by-product by Processor;
- 2) The fair market value of the by-product at the time it is further processed or refined by Processor.

C. Special handling instructions and dispositions of any by-product shall be determined between the recipient and the processor

13. TRANSFERS OF USDA DONATED FOODS

Donated Foods (DF) may be transferred only between DAs or RAs with the concurrence of FNS if applicable. All transfers of DF shall be documented. Such documentation shall be maintained in accordance with Article 16. C.

14. INVENTORY REDUCTIONS

A. Substitutable Donated Foods

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

B. Nonsubstitutable Donated Foods

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

15. PERFORMANCE REPORTING

Processor shall submit monthly reports pertaining to performance under this Agreement to the appropriate DA and to FNS, Attn: David Brothers, Food Distribution Division,

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

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

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

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

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

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

16. ACCOUNTABILITY AND RECORDS

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

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

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

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

C. Other Records

- 1) Quality of Commercial Food. Refer to Article 2.A.1.
- 2) Documentation of Value Pass-through or Fee for Service. Refer to Article 3.
- 3) Processor Sales Verification. Refer to Article 4.

- 4) Transfers of DF. Refer to Article 13.
- 5) Performance Reports. Refer to Article 15.A.

17. AUDITS

A. CPA Audits

Any Processor which meets the definition of a multi-state Processor as defined in 7 CFR Part 250 is subject to the following audit requirements.

Multistate Processors which receive more than \$250,000 each year in DF, shall obtain an independent CPA audit for that year. Multi-state Processors which receive \$75,000 to \$250,000 in DF each year shall obtain an independent CPA audit every two years. Those which receive less than \$75,000 in DF each year shall obtain an independent CPA audit every three years. The costs of the audits including those costs associated with training, shall be borne by the processors. All audit requirements are to be met as stipulated in Section 7 CFR Part 250.18. For audit purposes, the total value of the DF received shall be computed by adding the value of food received under all states commodity processing programs.

Noncompliance with this audit requirement shall render the Processor ineligible to renew or enter into another Agreement with any contracting agency until the required audit has been conducted and deficiencies corrected.

B. Right of Review and Audit

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

18. LIABILITY FOR DONATED FOODS

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

A. Substitutable Donated Foods

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

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

B. Nonsubstitutable Donated Foods

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

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

19. INVENTORY PROTECTION

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

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

20. AGREEMENT TERMINATION

This Agreement may be terminated immediately at the option of USDA for noncompliance of its terms and conditions by Processor or if any right in favor of USDA is threatened or jeopardized by Processor and/or his agent. This Agreement may be terminated by either party upon 30 days written notice to the other. Disposition of DF

inventory, either physical or book, with Processor or payment of value thereof shall be based on the following:

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

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

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

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

21. ASSIGNMENT/DELEGATION OF RESPONSIBILITIES

Processor shall not assign and/or delegate any of the duties and/or responsibilities to process DF under this Agreement to any party either by way of subcontract or any other arrangement without the prior written consent of USDA. If a subcontract is approved Processor remains responsible as prime contractor to ensure that DF is accounted for and processed according to the terms and conditions contained in this Agreement and is obligated to inform the subcontractor of these requirements. A subcontractor Agreement

(Addendum No. 1) must be filled out for each contractor and included with this Agreement when submitted for approval.

22. SOURCES OF DONATED FOOD FOR PROCESSING

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

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

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

23. DEMURRAGE AND DETENTION

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

24. INDEMNITY/HOLD HARMLESS

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

25. INSURANCE

Processor must maintain adequate coverage for all insurable losses.

26. ASSURANCE OF CIVIL RIGHTS COMPLIANCE AND EMPLOYMENT

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

27. UNLAWFUL BENEFITS

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

28. AGREEMENT ENTIRETY

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

29. MODIFICATION/AMENDMENT OF AGREEMENT

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

30. SERVING OF NOTICES

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

notice in the United States mail. Either party may change such designated representatives or mailing address by written notification to the other party.

31. LEGAL RESOLUTION

Processor agrees that in performance of this Agreement to obey, abide, and comply with all applicable local, state, and federal laws and regulations. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

32. DISTRIBUTION OF COPIES

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

33. ELIGIBLE RECIPIENT AGENCIES

Upon approval of this Agreement, the Processor, shall procure from the appropriate State DA or DA's where the processor plans to do business, a listing of all eligible RAs with appropriate identification numbers, if applicable, and addresses. Processor can reduce inventory only on sales of approved end products to these eligible RAs.

34. DEBARMENT

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

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

35. SPECIAL PROVISIONS

In addition to the forgoing provisions, Processor agrees to the following terms and conditions required by the USDA.

Federal Requirements

Performance Bond (Article 19) – Processor shall furnish a performance and surety bond in the

amount of \$ _____. If processor elects to supply an Irrevocable Letter of Credit, it must be a confirmed Irrevocable Letter of Credit in a United States Bank, the terms of which must be agreed to in advance by the USDA.

Other Substitutable Foods (Article 2) – If Processor is to process a DF not listed in Article 2A as substitutable food, the food must be listed below.

Processing of Donated Meat and Poultry – Fabrication procedures, including quantities of all ingredients must be fully detailed and attached to the EPDS for all poultry end products. The procedures must be signed and dated by the Processor and USDA and provided to the AMS Grader.

When providing a bone credit allowance for donated poultry, Processor must show in the procurement document between the processor and the recipient, the allowance as a percent of the total raw product provided. Also, the price per pound must be shown. Processor shall not salvage any edible portion of the bone credit product as mechanically deboned meat for Processor's own use or profit.

If a CN label is obtained, the information on the EPDS must be based on the product formulation used by the Processor to obtain the label. For each end product on the approved EPDS the same formulation must be used to obtain the label, prepare the EPDS and manufacture the end products.

If rework from a batch of donated ground meat or poultry keeps a batch from yielding the guaranteed minimum yield, commercial meat or poultry of equal or better quality may replace that amount of domestic meat or poultry set aside as rework. Rework of that batch and each successive batch will then be included in the next batch sequence until such time as regular runs of donated meat or poultry ceases. Rework from that final batch will then be used by Processor in its own inventory as replacement for that commercial meat or poultry used in the first run. Records will be maintained verifying amount of rework in each batch, and rework of DF in last batch must not exceed the amount of commercial meat or poultry in first batch. Rework can be substituted in runs of similar products.

A production run can be blended into the production run in accordance with requirements of FSIS. The AMS grader will record only the remaining rework. Processor may use one of the three Options listed below.

The rework may be returned to the RA for production in a frozen wholesome condition.

The cartons must specify legible exterior markings identifying it as rework, the date processed, and the amount contained in each carton. Processor will pay shipping charges.

Rework may be incorporated into a future production lot for an identically formulated end product, provided that the rework derived from backhauled commodities is only commingled in the processing of other commodities obtained from backhauling. Any rework whether obtained from processing of direct shipments or backhauled commodities, must be recorded on the grading certificate in such a manner that it is traceable to the production lot from which it was derived.

The rework may be paid for by the Processor based on the contract value of the commodity contained in the rework. Payment must be pro-rated and paid to RA.

Guaranteed Minimum Return – At the option of the USDA for any shortage on end products using donated meat or poultry, Processor may pay for the value of the donated meat or poultry that would be needed to produce the number of cases of end product to meet the guaranteed minimum return. The payment is to be made to RA. A copy of the invoice substantiating the payment must be attached to the monthly performance report. Condemned product cannot be considered part of the guaranteed yield and must be replaced.

Processor is permitted to credit the value of any remaining parts of poultry such as wings or other non-primal cuts against the cost of processing. However, the unused parts cannot be considered a part of the guaranteed minimum yield. The credit must be indicated on the EPDS and itemized on the invoice.

Other Requirements

Processor must return a warehouse and consignee receipt for each shipment of DF within one week of receipt of the shipment. The FNS-57, O. S. & D report, if applicable, must also be filed at this time. Failure to meet this requirement may result in termination of this Agreement.

The negotiation of a Donated Food Processing Agreement in no way constitutes a commitment that any DF will be shipped to the Processor. USDA cannot guarantee that any donated food will be available for processing. DF is made available depending upon the USDA's ability to purchase and acquire such item. Donated food processing agreements simply assure that in the event DF is shipped to the Processor, the value of those foods will be returned to eligible RA's under this Agreement in relation to the amounts of those foods contained in the end products.

A nutritional analysis of finished products that contribute to the meal pattern must be provided to RA upon request.

If Processor backhauls donated commodities, Processor is required to have a signed authorization from the RA prior to accepting their donated meat or poultry. A copy of this authorization shall be attached to the monthly performance report.

DA's will consult with Processor concerning the number of trucks to be shipped to Processor before any orders are placed with USDA.

36. PERIOD OF AGREEMENT

This Agreement shall become effective on _____, 20_____ and will terminate on June 30, 2002.

37. DONATED FOOD VALUE PASS THROUGH SYSTEM

Processor shall designate arrangements to be used during the term of the Agreement (Refer to Article 3). Check the following selected system. (More than one is allowable)

- | | |
|---------------------------------|--------------------------------------|
| _____ 1. Direct Sale Discount | _____ 4. Indirect Sale Refund |
| _____ 2. Direct Sale Refund | _____ 5. Fee for Service |
| _____ 3. Indirect Sale Discount | _____ 6. Other (with prior approval) |

38. AUTHORIZED PROCESSOR SIGNATURE

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

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

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

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

APPROVED

DISAPPROVED

USDA, FOOD DISTRIBUTION DIVISION

Name/DATE

Title (President or Vice-President)
PROCESSOR

Date Approved

Subcontractor Agreement: Agreement: Authority USDA FNS

Whereas _____ holds a Master Donated Foods Processing Agreement _____ (Primary Processor)

with the _____ covering the period from July 1, 2001 to June 30, 2002 (hereinafter “Agreement”) and whereas

_____ desires and is capable of performing part of the _____ (Subcontractor)

Agreement, namely _____ (Specify function and USDA donated foods used)

It is further agreed that the Subcontractor mentioned above will conform to all terms and conditions of the above named Agreement, making this addendum part of that Agreement

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

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

Subcontractor will attach a signed End Product data Schedule to this Addendum for the end products that are being processed, or any other function for which the Subcontractor is performing.

ALL PARTIES APPROVE BY SIGNING BELOW:

Primary Processor: Title: Telephone:
Name: Address:
Signature: date:

Subcontractor: Title: Telephone:
Name: Address:
Signature: date:

FNS APPROVAL:
Name: Title:
Signature: date:

U. S. DEPARTMENT OF AGRICULTURE

**Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion - Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-1733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS THAT FOLLOW)

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization

PR/Award or Project Name

Name(s) and Title(s) of Authorized Representative(s)

Signature(s)

date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representative of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/ or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntary excluded” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.