

MEMBER CONTRACT

America's Second Harvest – The Nation's Food Bank Network, an Arizona non-profit organization (the "National Office"), and _____, a _____ non-profit corporation (the "Member"), by signing below shall have entered into this Member Contract (this "Contract") as of _____, 2003 (the "Effective Date").

The purpose of this Contract between the National Office and the Member is to establish the Member's membership in the national Network of America's Second Harvest, provide definition and guidance for the business relationship between the Member and the National Office, foster a cooperative spirit, and improve the capacity of the Network to provide solutions to the problem of hunger in America.

SECTION I **DEFINITIONS**

As used in this Contract, the following terms will have the following meanings. (Note that in particular, the definitions for Food Bank and Food Rescue Organization are intended only for purposes of this contract. These definitions are not meant to restrict the range of operations for these organizations.):

ADR Organization – JAMS (formally Judicial Arbitration & Mediation Services), or its successor, or in the event there is no JAMS facility within 200 miles of either Party, the American Arbitration Association, or such other organization as the Parties to a dispute may mutually agree upon.

Agency – A non-profit organization or its legal equivalent that receives food from a Member.

America's Second Harvest – The National Office and all the Members.

America's Second Harvest Network or Network – The National Office and all the Members.

America's Second Harvest – The Nation's Food Bank Network – See National Office.

Code - Internal Revenue Service Code governing non-profit operations, and food recovery operations.

Food Bank – A charitable organization that solicits, receives, inventories and stores donated food and grocery products pursuant to grocery industry, local health department and appropriate regulatory standards. These products are distributed primarily to charitable human service agencies, which in turn, provide the products directly to needy clients through various programs.

Food Donor – An entity or individual that either has donated or may potentially donate food or grocery products to a Member or to America's Second Harvest.

Food Rescue Organization – A charitable organization that solicits and receives prepared and/or perishable foods, unless otherwise defined in a local agreement, pursuant to its local health department and/or appropriate regulatory standards. This food is distributed either directly to needy people or to charitable human service agencies, which in turn, provide the food to needy clients through various types of programs.

Local Agreement – A written, signed agreement between two or more Members specifying ways in which they will work together within the Network and resolve other operational issues.

Local Donor – A food or grocery product donor that is not a National Donor (see definition).

Member – An organization that operates as a Food Bank and/or Food Rescue Organization that is deemed by the National Office to have met all standards of admission into the Network, and which has executed a Member Contract (that has not been terminated) with the National Office. In this Contract, “Member” (when capitalized) specifically refers only to the Party that is entering into this Contract with the National Office.

Members – The collective term for all organizations that have signed Member Contracts (that have not been terminated) with the National Office. No category of Member other than Food Banks and Food Rescue Organizations can be created without amending this contract.

Member Compliance Standards - The standards described in Appendix B.

Member Fees – The fees to be paid by the Member to the National Office, as calculated in accordance with the method described in Appendix D to this Contract.

National Donor – A food or grocery product donor that donates goods to the Network through America’s Second Harvest.

National Office – The National Office refers to the collective staff and/or the legal entity known as America’s Second Harvest – The Nation’s Food Bank Network, based in Chicago, Illinois.

National Program – A non-governmental direct service program or alternative means of distribution operated by Members on a voluntary basis with the support of resource development and technical assistance from the National Office. Core components of the program are defined by the National Office and the NAC.

Network (The) – See America’s Second Harvest Network.

NAC – See National Council.

National Council - The representative body of the Members established by the America’s Second Harvest Network and elected by the Members.

Overlapping Service Area – A geographical area that is included in the service areas of two or more Members.

Party/Parties – For purposes of this Contract, the National Office and the Member shall each be referred to as a “Party,” and shall collectively be referred to as the “Parties.”

SDO – Subsidiary Distribution Organization; a nonprofit organization that acts as a local intermediary for a Member, serving agencies in part of a Member’s service area.

Service Area – A service area generally is an officially designated region in which one or more Members provide service. As used in this Contract, “Service Area” will refer to the region in which the Member provides service, as that region is defined in the Service Area Agreement attached and incorporated to this Contract as Appendix A.

Subsidiary – An organization or program owned by the Member.

SECTION II **GUIDING PRINCIPLES**

By entering into this Contract, the Parties evidence their shared commitment to the following common goals and guiding principles of the National Office and the Members:

1. The National Office and the Members are committed to working with unity of purpose toward the common goals of maximizing the provision of safe and nutritious food resources to people in need, and relieving hunger in the United States of America.
2. The National Office and the Members are committed to collaboration at the local and national levels, coordinating services, sharing resources and providing mutual support in order to best meet the needs of hungry people. This commitment requires alignment of individual and organizational interests with the common goals in a spirit of mutual accountability and partnership. This alignment is evidenced in the work of the National Council (NAC), which functions as the primary collaborative entity in the National Office’s relationship with the Members.
3. All Network members must uphold professional standards and a code of conduct based on trust, mutual respect and support for one another.

SECTION III **CERTAIN OBLIGATIONS OF THE NATIONAL OFFICE**

The National Office will have the following obligations under this Contract:

1. Meet all Member Compliance Standards, as set forth in Appendix B, which are applicable to the National Office.
2. Maintain and devote resources to ongoing food and grocery products procurement and an allocation system agreed upon by the National Office and the Members as the core function of the organization.
3. Provide the Members with timely reports on the distribution of product relative to the agreed upon allocation system.
4. Conduct periodic legislative needs-assessments and provide resources to advise the Member on public policy and awareness issues and activities.

5. Provide, maintain and operate a Network-wide, internet-based communication system for all Members.
6. Provide technical assistance to the Member on operational matters.
7. List the Member's name and contact information, as appropriate and as agreed to by the Member, on its brochures, annual reports and Internet site(s). Use the phrase, "a network of Food Banks and Food Rescue Organizations" on pertinent materials, e.g. annual reports, newsletters, general organization promotional brochures, Internet site, and primary letterhead.
8. Coordinate and conduct national public awareness, public policy and fund-raising activities on behalf of the Network, utilizing input from the Members after providing the Members with sufficient advance notice of such proposed activities. In the event circumstances do not permit such notice and input, the National Office will consult the National Council.
9. Make reasonable efforts to coordinate National Office fundraising, marketing and public relations activities conducted in the Member's Service Area.
10. Collect and share hunger-related information and reports with the Member.
11. Facilitate the Network's response to disasters.
12. Maintain a repository of Network operational and program data.
13. Involve the Member in the ongoing strategic planning process of the National Office.
14. Work with and utilize input from the National Council for evaluating programmatic activities and effecting changes in programs and core functions of the Network. Work with the NAC to define the core components of National Programs. Work in collaboration with the NAC to establish the strategic direction of the Network.
15. Monitor relevant laws and regulations for changes and inform the Member accordingly. Comply with changes in relevant laws and regulations.
16. Enforce compliance with Member Compliance Standards and recommend revisions to standards when appropriate.
17. Not engage in programs or alternative means of distribution (as defined in the policy document: *Process for Identifying and Developing a New National Program of America's Second Harvest – The Nation's Food Bank Network*, as may be amended from time to time by the NAC) that are outside the normal activities of a Food Bank or Food Rescue Organization unless approved by a 2/3 vote of the NAC, nor engage in such activities in any Service Area, without the consent of the Member assigned to such Service Area, except through or in cooperation with such Member. Before permitting the establishment of any new program or alternative means of distribution, the National Office will first negotiate with the NAC in good faith to determine the terms of the new program or alternative means of distribution. Each Member will have the right at its sole option to participate or decline to participate in the new program or alternative means of distribution. A Member's decision not to participate in the new program or alternative means of distribution shall not be grounds for probation, suspension, termination, or any other punishment of the Member. The National Office may support or engage in activities with a Member in an Overlapping Service Area whether or not the other Member sharing the Service Area consents, but without excluding the participation of the

other Member if it wishes to participate, subject to any applicable terms of the Local Agreement.

18. Provide, at the time of each National Office monitoring report, a report of the adequacy of service in the Member's Service Area.

SECTION IV **CERTAIN OBLIGATIONS OF THE MEMBER**

The Member will have the following obligations under this Contract:

1. Meet all Member Compliance Standards, as described in Appendix B.
2. Maintain and devote resources to the acquisition and distribution of food in its Service Area as the core function of the organization.
3. Pay the Member Fees in a timely manner.
4. Identify itself as a Member of America's Second Harvest, using the phrase "a Member of America's Second Harvest – The Nation's Food Bank Network" and/or the America's Second Harvest logo on pertinent materials, e.g. annual reports, newsletters, general organization promotional brochures (excluding program or project specific brochures such as for planned giving), Internet site, and primary letterhead. Use of America's Second Harvest trademarked terms and graphics shall be in accordance with the Logo and Trademark Licensing and Use Guidelines, as described in Appendix C.
5. Participate in and support national public awareness, public policy and fund-raising activities, to the extent possible.
6. Provide required reports to, and respond to requests for information from, the National Office in an accurate and timely manner.
7. Provide disaster relief in accordance with the Member Compliance Standards, as described in Appendix B.
8. Comply with changes in relevant laws and regulations.
9. Not permit any of its subsidiaries or SDO's to engage in activities that would be prohibited to the Member if done by the Member.
10. Support the work of the NAC in evaluating programmatic activities and effecting changes in programs and core functions of the Network. Support the work of the NAC to establish, in collaboration with the Chief Executive Officer and Board of Directors of the National Office, the strategic direction of the Network.

SECTION V **SERVICE AREA**

1. The Member's Service Area is described in Appendix A. Except as provided in paragraph 5 below, each Member has the exclusive right to engage in the activities permitted by this Contract in its designated Service Area unless (1) there is an Overlapping Service Area existing at the time this Contract was executed (but only to the extent of the overlapping area) or (2) the affected Member agrees to permit its Service Area to become an Overlapping Service Area. The National Office shall not operate or allow to be operated any National Office programs, or use or enter into a new license for

others to use any of the trademarks licensed hereunder at any location within the Service Area, except as provided in paragraph 5 below.

2. The Member is expected to solicit and accept product donations from Food Donors in the Service Area. The Member is expected to conduct fund-raising activities in the Service Area.
3. Unless otherwise noted in a Local Agreement between two Members, distribution of food, solicitation and acceptance of product from donors and conduct of fund-raising activities are restricted to a Member's Service Area, with the following exceptions:
 - A. Each Member may engage in grant writing activities directed at corporations and foundations outside of the Member's Service Area provided the funding policies of the corporations and foundations include the Member's Service Area; and
 - B. Each Member may engage in media outreach and communication activities involving media markets that include the Member's Service Area.
4. Members with an Overlapping Service Area must have Local Agreements that govern, at a minimum, how they will:
 - A. Allocate product and/or donors provided by the National Office to the shared service area;
 - B. Allocate funds and/or funders provided by the National Office to the shared service area; and
 - C. Coordinate media outreach and communication efforts.

Effective Local Agreements should also include agreement on definitions, dissolution, revision and extension terms for the agreement, agency relations, handling of local funders and food donors, and conflict resolution.

5. The National Office may permanently reassign a portion of the Member's service area to another Member, or expand the boundaries of another Member's service area to overlap with part or all of the Member's service area for the purpose of insuring adequate service. The determination for reassignment will occur only if:
 - A. Such reassignment is by mutual agreement between two Members and approved by the National Office;
 - B. Following the guidelines described in Section 3.A of Appendix B (as applied to the entire service area), the National Office determines that agencies are inadequately served in the Member's Service Area; and/or
 - C. Following the guidelines described Section 3.A of Appendix B (as applied to the entire service area), the National Office determines that another Member is willing and able to provide food bank or food rescue services not adequately provided by the incumbent Member in the inadequately served Service Area.

Subparagraphs B and C go into effect beginning January 1, 2005. Any process of reassignment of territory may not begin prior to this date unless that reassignment is by mutual agreement.

Prior to any such determination, the National Office will notify the Member in writing of its evidence that all or part of its Service Area has fallen out of service adequacy, and request a written response from the Member within forty-five (45) calendar days of the delivery of such notice. The Member's written response to the National Office shall include evidence refuting the determination or its plan for meeting the needs of the inadequately served area. In the event the National Office accepts the Member's evidence or finds their amended service plan acceptable, the Member shall be given reasonable time to implement the plan and return the area to adequate service. In the event that the National Office rejects the evidence and does not find the amended service plan acceptable, the National Office may reassign the affected portion of the Member's Service Area. The National Office will inform the Member of any reassignment in writing, and provide its justification of such decision, no more than forty-five (45) calendar days after it receives the Member's response to the National Office's initial notice to the Member that the Member's Service Area is inadequately served. The Member may appeal the National Office's decision and the reassignment shall be stayed until the appeal is resolved through the Conflict Resolution Process provided for in Section VII.

If the National Office does not reassign the Service Area within ninety (90) calendar days of the final determination, then the Service Area in question cannot be reassigned without commencing the process described in this Section 5 of the Contract anew.

No other change in the Member's Service Area will be made without the consent of the Member.

SECTION VI **MEMBER FEES**

The Member Fees are set forth in the Fees Summary in Appendix D. Any amendments to those Fees will be developed with input from the Members and will have the prior approval of the Members, as required in Section 2.B of Appendix E (Amendments).

SECTION VII **CONFLICT RESOLUTION**

All parties for the healthy functioning of the Network will undertake resolution of conflict among Members, and between Members and the National Office, in good faith. The policies in this Section VII will be administered only after the Chief Administrators and the Boards of Directors of the respective Members and/or the National Office have exhausted all good-faith efforts at their disposal to resolve the conflict.

The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Contract (including any disputes, claims or controversies (i) between the National Office and one or more Members, or (ii) between two or more Members) shall be submitted to the ADR Organization, for mediation, and if the matter is not resolved through mediation, then it shall be

submitted to the ADR Organization for final and binding arbitration. Either party may commence mediation by providing to the ADR Organization and the other Party a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with the ADR Organization and with one another in selecting a mediator from the applicable panel of neutrals, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any employees of the ADR Organization, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or 30 days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the Parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this Section may be enforced by any Court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the Party against whom enforcement is ordered. Any Party may seek injunctive or other equitable relief from a court of competent jurisdiction to preserve the status quo pending mediation or arbitration. The arbitrator shall apply the provisions of this Contract, without varying therefrom in any respect. The arbitrator shall not have the power to add to, modify or change any of the provisions of this Contract.

SECTION VIII **TERMINATION**

1. This Contract may be terminated as follows:
 - A. The Member may terminate this Contract by providing written notice of such a decision by its Board of Directors to the National Office at least thirty (30) calendar days prior to the effective date of such termination.
 - B. The National Office may terminate this Contract only as provided in Section 3.D. of the Member Compliance Standards, as described in Appendix B.
2. On termination of this Contract, the Member shall immediately cease to be a Member of America's Second Harvest. As explained in Section 3.D of Appendix B, this termination does not go into effect until the Appeals process (Section VII) has been completed.
3. The Member agrees that upon termination of this Contract by either Party, the Member shall immediately cease to represent itself in any fashion as a Member of America's Second Harvest, and to that end shall promptly take all appropriate actions, including but not limited to the following:

- A. Removal of the America's Second Harvest name and/or logo from display at any and all Member facilities, and on any and all vehicles, uniforms, stationery and promotional or training or other literature within thirty (30) calendar days;
 - B. Prompt written notification to all the Member's full-time and part-time employees and its Board of Directors that the Member is no longer a Member of America's Second Harvest;
 - C. Reclamation by the National Office at its discretion and sole cost of all product on hand at the Member site from National Donors;
 - D. Within thirty (30) calendar days, submission of all product receipt and distribution records to the National Office, including, but not limited to receipts, distribution audits, and inventory reconciliation records for the previous twelve (12) months; and
 - E. Any other action as may reasonably be requested by the National Office to address special circumstances not dealt with in Sections A through D above.
4. The National Office agrees that upon termination of this Contract by either Party, the National Office shall immediately cease to represent the former Member as a Member of America's Second Harvest, and to that end shall promptly take all appropriate actions, including but not limited to the following:
- A. Removal of references to the Member from National Office websites, videos, fundraising letters, brochures, press releases, and other promotional or educational materials within thirty (30) calendar days (excepting existing stock of such promotional materials);
 - B. Prompt written notification to all National Office board members, full-time and part-time employees that the Member is no longer a Member of America's Second Harvest;
 - C. Return of pro-rated annual Member Fees to the Member within thirty (30) calendar days; and
 - D. Any other action as may reasonably be requested by the Member to address special circumstances not addressed in Sections A through C above.

SECTION IX
MISCELLANEOUS LEGAL PROVISIONS

1. This Contract constitutes the entire Contract between the National Office and the Member with respect to the subject matter of this Contract and supersedes any previous agreements, oral or written, between the National Office and the Member with respect to that subject matter. The Appendices identified in this Contract are incorporated into this Contract by reference and made an integral part of this Contract.
2. Other miscellaneous legal provisions of this Contract, which govern the relationship of the Parties with respect to matters such as indemnification and amendments, are detailed in Appendix E.

In witness of their intention to be legally bound by the terms and conditions of this Contract, and to work together toward the common goals, and in accordance with the guiding principles, described in Section II, the National Office and the Member have signed this Contract as of the Effective Date.

**AMERICA'S SECOND HARVEST –
THE NATION'S FOOD BANK
NETWORK:**

[MEMBER NAME]:

Alan Brislain
Senior Vice President of Member Services

[Name of Authorized Signatory]
[Title of Authorized Signatory]

List of Appendices

- A. Service Area Agreement
- B. Member Compliance Standards
- C. Logo and Trademark Licensing and Use Guidelines
- D. Fees Summary
- E. Miscellaneous Legal Provisions



MEMBER CONTRACT

As Amended August 5, 2005

APPENDIX A

Service Area Agreement

SERVICE AREA AGREEMENT

This Service Area Agreement (this "Agreement") is executed this ____ day of _____, 200_ between America's Second Harvest – The Nation's Food Bank Network, an Arizona non-profit corporation (the "National Office"), and <MEMBER NAME>, a(n) <STATE> non-profit corporation (the "Member") in order to define the Service Area of the Member. For purposes of this Agreement, "Service Area" will refer specifically to the Service Area of the Member, as defined below.

If the Member is the only Member assigned to the Service Area defined below, both parties agree that the Member shall have exclusive rights of service and resource development within the defined Service Area, subject to the policies governing such service (as stated in Section V of the Member Contract to which this Agreement is attached and incorporated).

If the Member shares any part of the Service Area with another Member, both parties agree that the Member shall have shared rights of service and resource development within the Service Area, subject to a) the policies governing such service (as stated in Section V of the Member Contract), and b) the terms of any Local Agreement between the Affiliate and the other Member (s) whose Service Area overlaps this Service Area.

The Service Area of the Member shall be defined as follows:

State	County	Shared (Y/N)	Sharing Member	State	County	Shared (Y/N)	Sharing Member

<p>AMERICA'S SECOND HARVEST – THE NATION'S FOOD BANK NETWORK:</p>	<p>[MEMBER NAME]:</p>
<p>_____ Alan Brislain Sr. Vice President of Member Services</p>	<p>_____ [Name of Authorized Signatory] [Title of Authorized Signatory]</p>

MEMBER COMPLIANCE STANDARDS

Membership in the America's Second Harvest Network requires compliance with a number of operating standards, which are described in this Appendix B (the "Member Compliance Standards"). The Member Compliance Standards have been developed and refined over the years by a collaborative process involving the National Office, the Members of America's Second Harvest, the food industry, and regulatory authorities at the Federal, state, and local levels.

The goal of the Member Compliance Standards is to establish and maintain a credible, safe, and effective national distribution system for donated products. They define mandatory operating procedures and practices to ensure food safety, financial and inventory accountability, and administrative cohesion relative to the business practices among the members and between the members and the National Office.

This appendix defines the Member Compliance Standards, which fall into the following three major sections:

- ✓ **Section 1: Administrative Requirements**
- ✓ **Section 2: Operating Policies:** A summary of the required components of the traditional America's Second Harvest Compliance Manuals. (The manuals continue to be useful for gaining broader context and interpretation of some of these Member Compliance Standards, and for technical assistance on how to comply with them. Although they were incorporated in the previous version of the Member Contract by reference, we have distilled the requirements to create this Appendix so that the full manuals are no longer part of the contract document.)

The manuals represented in this appendix include:

- ✓ *Agency Relations Manual*
- ✓ *Product Donations Manual*
- ✓ *Food Safety and Handling Manual* (newly consolidated manual includes *Good Warehouse Practices Manual*, *Salvage Manual*, and *Fresh Foods Manual*)
- ✓ *Inventory Control and Record Keeping Manual*
- ✓ *Donor Relations Manual*
- ✓ *Disaster Relief Response Manual*

Each of the chapters in this section will contain the required practices defined more fully in the corresponding manual.

- ✓ **Section 3: Non-Compliance Policies (Disciplinary Policies)**

Any questions regarding interpretation or content should be directed to the Member Services Department of the National Office.

SECTION 1:

ADMINISTRATIVE REQUIREMENTS

- A. Community Support** – The Member shall demonstrate broad community support from funding sources, the food industry, in-kind contributors, individuals, and other organizations and shall seek to expand public awareness of the National Office, the Member, and the Network.

The National Office shall seek broad national support from funding sources, the food industry, in-kind contributors, individuals, and other organizations, and shall seek broad national support for itself, the Member, and the Network. The National Office shall be reasonably available to advise the Member on public relations and fund raising issues.

- B. Compliance Auditing** – The Member shall allow the National Office or its authorized representatives to periodically inspect the Member's operations upon reasonable notice and during regular business hours. The National Office shall be permitted by the Member to conduct an unannounced inspection if the National Office has reasonable expectation that serious non-compliance with the Member Compliance Standards exists in the Member's operation. The National Office shall provide a written report to the Member within 30 days of the inspection. The Member shall also allow the National Office donor companies to inspect the Member's product handling and or warehouse practices periodically upon reasonable notice and during regular business hours.

- C. Financial Record Keeping** – The Member and the National Office shall maintain financial records that comply with generally accepted accounting principles. Each shall have an annual comprehensive independent certified audit. Each Party shall furnish the other with reports at least annually on its activities (including distribution statistics) and its financial condition, including its audited financial statements and the auditor's unqualified opinion letter. If the Member's annual operating budget is less than \$100,000, the Member may satisfy this requirement by having an independent financial review in lieu of a full audit.

- D. Financial Stability** – The Member and the National Office shall each:

1. Maintain a reserve fund equal to or greater than an average quarter's operating expenses (based on the previous fiscal year audited financial statements);
OR
2. Demonstrate a history of positive cash flow in each of the two preceding fiscal years;
OR
3. Provide the other Party with a plan and timetable to address the situation or an explanation.

- E. Insurance** – The Member and the National Office shall maintain such coverage as is required by their respective state and local governments. At a minimum, the Member shall maintain comprehensive general liability insurance (including product liability insurance), including one or more endorsements evidencing that the coverage is "broad form" and

includes contractual liability coverage with limits of not less than \$1,000,000 per each occurrence. This coverage shall be underwritten by an insurance carrier rated A or better by the A. M. Best Company.

The Member shall list the National Office as a Certificate Holder, ensuring that the National Office shall be notified at least ten (10) days in advance if the coverage is changed or canceled for any reason.

The Member (or its parent organization) may not elect to be self-insured with respect to the risks covered above without National Office approval, which approval shall not be unreasonably withheld.

F. Legal Responsibilities – The Member and the National Office shall each comply with all relevant aspects of all Federal, state, and local laws, which affect or relate to their programs and operations.

G. Management and Governance –

1. **Staffing:** The Member and the National Office shall maintain adequate staffing to maintain effective operations. Staff must be reasonably available during regular business hours. One person must be designated as a Chief Administrator. The Member must have the availability of part-time or volunteer resources to accommodate unusual and/or special workload requirements.
2. **Board of Directors:** The Member and the National Office shall maintain Boards of Directors which adhere to the standards for Boards of Directors promulgated by the Better Business Bureau Wise Giving Alliance.

H. Multiple Sites – The Member shall cause any branch site(s) to comply with these Member Compliance Standards.

I. Subsidiary Distribution Organizations (SDOs) – The Member shall comply with America's Second Harvest requirements regarding SDOs, including, but not limited to:

1. Providing the National Office with a copy of new and revised SDO Contracts.
2. Providing SDOs with copies of all pertinent America's Second Harvest materials such as operating manuals, notices of training opportunities, etc.
3. Conducting thorough compliance audits of the SDOs annually.
4. Providing the SDO and the National Office with copies of any compliance audit reports in a timely manner.
5. Providing the National Office with written notification of any disciplinary action imposed upon an SDO by the Member.

J. Tax Exempt Status – The Member is required to be a separately incorporated organization, or a wholly owned program of such an organization, determined to be exempt from tax under



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Member Compliance Standards

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Section 501(c)(3) of the Internal Revenue Code (the “Code”) or any successor provision, for a purpose related to serving the ill, the needy, or infants.

- K. Use of Name** – Consistent with the terms of Appendix C, the Member shall acknowledge its association with America’s Second Harvest in pertinent materials, i.e. annual reports, newsletters, general organization promotional brochures (excluding program or project specific brochures e.g. planned giving brochure), and web site. The Member must identify itself as a member of America’s Second Harvest as defined in Section IV.4 of the Member Contract. Except as set forth in this Contract, the Member may not use or allow other parties to use the America’s Second Harvest name or marks without the National Office’s written permission. The Member shall have the right to use the name and marks of America’s Second Harvest solely according to the terms of Section 1.K and 2.G of this Appendix B, Section IV.4 of the Contract, and Appendix C.
- L. Warehouse and Storage Capability** – The Member shall maintain appropriate facilities and equipment for the safe and efficient handling of food and grocery products, as required by the Member’s program type.

SECTION 2:

OPERATING POLICIES

A. Agency Relations

1. **Eligibility** – The following requirements, emanating from the Tax Reform Act of 1976, must be adhered to with regard to Agencies served by the Member:
 - a. Must be a 501(c)(3) charity or equivalent.
 - b. May not be a private foundation, even if it has 501(c)(3) exemption.
 - c. Must be incorporated for the purpose of serving the ill, needy, or infants (minor children).
 - d. May not be incorporated for a purpose unrelated to serving the ill, needy, or infants (minor children) (such as the publication of a non-profit periodical providing information to members.)
 - e. Must distribute donated products free of charge for use by the ill, needy, or infants (minor children).
 - f. May not sell or use donated products in exchange for money, other property, or services.
 - g. Must keep books and records which accurately reflect the total amount of product received and distributed (or used) and outline the agency's procedure for determining that the final recipient of the product is ill, needy, or infant (minor child).
 - h. Does not need to keep specific record of individual amounts distributed to specific recipients nor the names of those recipients.
 - i. Must provide the Member with a written statement containing the following information.
 - i. A description of product received and the date of its receipt.
 - ii. An acknowledgment that the agency intends to comply with the restrictions on the use and transfer of donated property, as described in section 170(e)(3) and any amendments to the Internal Revenue Code. (See the Federal Register/Vol. 47, No. 21/Monday, February 1, 1982/Rules and Regulations, pp. 4509 to 4512).
 - iii. An acknowledgment that the agency will maintain adequate books and records, and make them available upon request.
 - iv. An acknowledgment that the agency is a 501(c)(3) organization or the equivalent, and not a 501(c)(3) private foundation.
 - j. Must ensure that the donated product conforms to any applicable provisions of the Federal Food, Drug, and Cosmetic Act (as amended), and any regulations that follow.
 - k. May not store or distribute product in a manner inconsistent with the Federal Food, Drug, and Cosmetic Act (as amended) and its regulations.
 - l. Because a donor cannot always determine at the time of a donation whether or not the special tax deduction is going to be taken by his or her corporation, the Member must treat all donations as gifts that qualify for deduction under

Section 170(e)(3) of the Code. (The IRS-related eligibility requirements of the America's Second Harvest Network sometimes differ from the requirements faced by other charities. Donated goods that are distributed by other charities in ways that are not acceptable under the America's Second Harvest system (such as donated clothing that is sold to clients at thrift stores) are not eligible for the special tax deduction and, hence, the distribution of these goods is not limited by the parameters set in Section 170(e)(3).)

2. **Required Documents** – New agency applicants must pass an on-site monitoring visit. It is then necessary to have the appropriate agency representative sign an “Agency Agreement” and an “Agency Release.”
 - a. The Agency Agreement shall affirm:
 - i. The IRS eligibility requirements for receipt, transfer, and use of donated food under section 170(e)(3),
 - ii. The safe and proper handling of the donated goods, which conforms to all local, state and Federal regulations,
 - iii. Willingness to adhere to additional donor stipulations,
 - iv. Willingness to abide by the policies, procedures, and record keeping requirements of the Member,
 - v. That all items are accepted in “as is” condition,
 - vi. Agreement to pay the handling fees assessed,
 - vii. Any specific board policies that should appear in such an agreement.
 - b. The Release shall affirm that the original donor, the Member, and the National Office:
 - i. Are released by the agency from any liabilities resulting from the donated food,
 - ii. Are held harmless from any claims or obligations in regard to the agency or the donated goods, and
 - iii. Offer no express warranties in relation to the gift of goods.
3. **Agency Files** – Agency files must contain:
 - a. Clear evidence of the agency's 501(c)(3) exemption or equivalent,
 - b. Completed agency application/information sheet,
 - c. An Agency Agreement and Release, signed and dated,
 - d. Completed monitoring reports,
 - e. All correspondence between the Member and the agency.

IRS regulations state that each agency must keep books and records of the total amount of property received and distributed through them and outline the procedure by which they determine that the property will be received by an ill or needy individual or infant. These records do not need to include the individual names of the

products distributed. (See Section 1.170A-4A(b)(4) in the Federal Register, Vol. 47, No. 21, 2/1/82, Rules and Regulations p. 4509.)

Each agency must be monitored at least once every two years.

B. Product Allocation and Distribution

1. Product Allocation Policies

- a. **Allocation and Distribution** – The National Office shall serve as liaison between the food industry and the Network, facilitating equitable allocation and distribution of food and grocery products on the national level. (Equitable allocation shall be achieved through the implementation of the allocation policy, mutually developed and agreed to by the National Office and the Members.) In this capacity, the National Office will provide coordinating, troubleshooting, and record keeping services to the Members. The National Office will make reasonable efforts (recognizing its dependence on the National Donor contact) to ensure the accuracy of the data provided on the product allocation notices.

If a National Donor calls the Member directly with three or more trailer loads of product, the Member must contact the National Office Logistics Department to ensure proper distribution of the product consistent with the allocation policy agreed upon by the National Office and the Members. The Member is encouraged to call the National Office Logistics Department if a Local Donor calls the Member with three or more trailer loads of product.

- b. **Product Misuse** – The Member shall inform the National Office immediately if it has cause to suspect that product in the Member's inventory or previously distributed by the Member has been seriously misused. In the event of such an incident, or if the Member or the National Office receive such notice from a National or Local Donor, the Member, in consultation with the National Office, will develop an action plan to investigate the misuse and address donor concerns. If the National Office determines that the Member has not responded in a timely and effective manner to address donor concerns, it shall contact the Member's Chief Administrator and Board Chair to notify him/her of the possibility of disciplinary action and the National Office's assumption of negotiation and resolution responsibilities. Any financial restitution shall be the responsibility of the Member. Any dispute between the Member and the National Office regarding such an incident shall be resolved in accordance with the provisions of the Conflict Resolution Process, defined in Section VII of the Member Contract.

The National Office shall be available to advise the Member as necessary regarding investigation and resolution of product misuse incidents.

- c. **Product Acceptance** – The Member has the right and responsibility to refuse any product that could cause the Member to be in non-compliance with either these Member Compliance Standards or donor stipulations.

- b. **Reporting** – There are three regular reporting tools which must be processed by the Member in a timely manner. All are submitted on a quarterly basis. These include:
- i. Donor Specific Poundage Report – Use this report instead of Blue Receipts only for those donors listed in the report form. While these donations remain local, the report allows the National Office to retain critical data and accurately represent the Network in pursuing potential donors.
 - ii. Blue Receipt Activity Report – This report verifies that Blue Receipts are being submitted in a timely manner and aids in identifying the scope of problems related to the processing of Blue Receipts.
 - iii. Quarterly Poundage Report – This report gathers data from the Network regarding total receipts and distribution by category and sources.
3. **Over the Counter Drugs** –The Member shall be under no obligation to accept over-the-counter (OTC) drugs. The Member must determine and comply with any Federal, state, or local restrictions or licensing requirements for the distribution of OTC drugs. At a minimum, the product must meet the following criteria:
- a. **Product Standards** – All over the counter drugs must:
 - i. be within code date
 - ii. have intact and readable labels, including common name of drug, list of ingredients, net quantity of contents, potency per recommended dose, adequate directions for use, storage requirements (if any), control number, expiration date, name and address of responsible firm, and warnings.
 - iii. have intact tamper resistant packaging.
 - b. **Storage**
Over the counter medication must be segregated and stored securely prior to distribution. This product must receive a final quality control check at the time of distribution to verify that it still meets the requirements in 3.a, above.
 - c. **DEA Requirements**
If the product contains ephedrine, or pseudoephedrine, (primarily cough syrups or sinus medications), the Federal Controlled Substances Act requires that the Member have a DEA issued control number in order to legally redistribute the product. Certain record keeping procedures are required. This product is regulated regardless of where the Member got it (i.e. salvage, local case-lot donor, National Donor).

The Food and Drug Administration (FDA) announced on November 3, 2000 its intention to classify phenylpropanolamine (PPA) as not generally recognized as safe and effective for over-the-counter use. The FDA believes

that companies handling PPA should voluntarily discontinue marketing any drug products containing PPA. The Member must discard any product containing phenylpropanolamine.

4. **Donor Requirements and Restrictions** – Some National Donors make requests, place restrictions, or have special requirements on some or all of their donations. The Member must adhere to such restrictions. Because the list of restrictions changes as to donors and specific restrictions, the Member must regularly refer to the America's Second Harvest *Product Donations Manual* for current information.

C. Product Record Keeping and Inventory Control

1. **General Requirements** – The National Office shall maintain appropriate records on its allocation of product to the Network. The Member shall maintain an inventory record-keeping system capable of:
 - a. Tracking product distribution quickly in the event of a recall;
 - b. Providing data needed by food donors and the IRS for tax deduction purposes;
 - c. Providing a current inventory of stock; and
 - d. Reconciling the inventory records of product received, on hand, and distributed.
2. **Internal Revenue Service Requirements** – Consistent with the requirements of the IRS (See Federal Register, Volume 47, Number 21, February 1, 1982, Pages 4510-4512.), the Member shall furnish every product donor with a written statement which:
 - a. Describes the food products received and lists the date of receipt;
 - b. States that the product will be used in compliance with the IRS regulations governing product donations;
 - c. States that the Member is a 501(c)(3) organization and, therefore, qualifies to receive donations;
 - d. States that adequate records are maintained and are available to the IRS on request; and
 - e. This statement must be submitted to the donor company by the date its corporate tax return is due for the year in which the product was donated to the Member, but at least once a year.
3. **America's Second Harvest Requirements** – Consistent with the requirements of America's Second Harvest, the Member must:
 - a. Maintain a record of all food received: date received, donor, name of products, and quantity received;
 - b. Provide donors and the National Office with appropriate receipts (specific information about receipting is listed above and included in the Receipting section of the America's Second Harvest *Product Donations Manual*);
 - c. Maintain a record of all product distributed: items, quantity, date distributed, and name of recipient agency;

- d. Be able to track and reconcile donation records with distribution and stock-on-hand records in a reasonable time frame (For National Office donations, this would include all the information in sub-sections a and c immediately above);
- e. Maintain a system for organizing or labeling stock that facilitates inventory control;
- f. Record all amounts of food in pounds;
- g. Require recipient agencies to maintain files of their invoices from the Member for a year;
- h. Provide the National Office with information annually on the amount of product received and distributed by the Member in categories listed on America's Second Harvest Product Donation Quarterly Poundage Report;
- i. Update current inventory on a daily basis; and
- j. Reconcile receipt and distribution records for at least two National Office donations each month, recording the results, to test ability to accurately track the distribution.

D. Food Safety and Handling

1. **Laws and Regulations** – The Member's operations must comply with all applicable Federal, state, and local regulations and statutes relating to the receiving, storing, shipping, processing, and handling of food products. As of the Effective Date of the Member's Contract with the National Office, these include, at a minimum:
 - a. **Model Food Salvage Code**

The Food and Drug Administration (FDA) and the Association of Food and Drug Officials (AFDO) have released a Model Food Salvage Code (MFSC) that outlines standards for operating a salvage facility. The MFSC was developed to give states a model to follow in drafting laws and regulations to control practices of the salvage food industry. It is not a law in itself, but may be the basis of a law, statute, or code adopted by state or local authority. The Model Food Salvage Code was drafted to regulate practices associated with salvage resulting from a catastrophic event such as fire, flood, or wreck. Most of the salvage received by Members is from retail sources and does not directly fit the intent of the MFSC. As a result, there are some sections or provisions with which Members would find it impractical or impossible to comply. As a model code, it does not have the weight of law. While some states have adopted the code, either as written or in a modified form, still some provisions may not apply. Nevertheless, Members must be familiar with the MFSC and establish a goal of complying with its applicable provisions. A copy of the MFSC is available on request from the National Office.
 - b. **Federal Food, Drug, & Cosmetic Act, PL 75-717**

The Federal Food, Drug and Cosmetic Act prohibits the introduction, delivery, or receipt through interstate commerce, of any food, drug, cosmetic, or device that is adulterated, misbranded, or unlabeled. Federal law clearly

requires any organization, including the Members, to promptly dispose of any foods that are, or may be, adulterated. (“Adulterated” and “contaminated” are considered synonymous terms in this manual.) This act considers food to be adulterated if:

- i. It consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for use as food;
- ii. It has been held, packaged, or prepared under unsanitary conditions;
- iii. It bears or contains any poisonous or deleterious substance; or
- iv. Its container is composed of any poisonous or deleterious substance that may render the contents injurious to health.

c. Fair Packaging and Labeling Act, PL 89-755

The Fair Packaging and Labeling Act prohibits the distribution of any food item (except fresh fruit and vegetables) without a label. Labels shall contain:

- i. The common or usual name of the product;
- ii. The name and place of business of the manufacturer, packer, *or* distributor;
- iii. The net quantity of the contents; and
- iv. The common or usual name of each ingredient, listed in descending order of prominence.

The labels on many salvage products are ripped, torn, or illegible. These products cannot be redistributed unless the information listed above is in English, legible and complete. The purpose of such laws is to protect the consumer. Many people are on restricted or specialized diets while others may be allergic to individual foods (peanuts, wheat, tree nuts, etc.) and use the ingredient listing to identify products that may contain the allergen and thus must be avoided. In some cases the latter situation may be life threatening.

d. The Current Good Manufacturing Practices for the Manufacturing, Processing, Packing or Holding of Human Food

The Current Good Manufacturing Practices for the Manufacturing, Processing, Packing, or Holding of Human Food, the regulations emanating from various statutes that govern the handling and distribution of food products, are found in Chapter 21 of the Code of Federal Regulations, Section 110.1 et. seg. This document outlines both required and suggested practices to assure that human food is prepared, handled, and stored safely. It outlines suggested personal cleanliness practices and minimum standards for buildings, grounds, sanitation, and equipment. This document has been a primary source for guidance in preparing this section of the Member Compliance Standards.

e. Model Food Code

The Model Food Code is provided for use by food regulatory jurisdictions at all levels of government. The Food Code is promulgated by the Food and Drug Administration (FDA), and is revised every other year. The revision

process involves the participation of FDA, U. S. Department of Agriculture, Association of Food and Drug Officials, Conference for Food Protection, and other organizations that provide a process that encourages representative participation in deliberations by government, industry, and academic and consumer interests. The Model Food Code is intended to foster uniform safe food handling and food service standards across the country and is recognized by the various Federal, state, and local regulatory authorities as the best consolidation of food safety practices.

Like the Model Food Salvage Code, the Model Food Code is a model code, and does not have the weight of law. While some states and local jurisdictions may have adopted the Model Food Code, either as written or in a modified form, still some provisions may not apply. Nevertheless, Members must be familiar with the Food Code and establish a goal of complying with its applicable provisions.

2. **Facility Management** – The Member’s operations must comply with all applicable health and regulatory requirements for the health and well being of Member personnel and the recipients who will benefit directly or indirectly from the goals established by the Member.
 - a. The Member must have an organized sanitation and safety program that shall comply with applicable local, state, and Federal (for interstate activities) governmental regulations.
 - b. At the Member, an individual who has received training in sanitation and safety practices appropriate to warehouse operations must be designated to function as the sanitation coordinator responsible and accountable for monitoring the sanitation and safety program of the warehouse operation. An individual who has received training in sanitation and safety practices appropriate to transportation of food must be designated to function as the sanitation coordinator responsible and accountable for monitoring the sanitation and safety program of the food transport operation. The same person may fulfill both functions if appropriately trained in both areas. Regardless of the delegation of this task, the Member’s director has the basic responsibility for maintaining a facility and/or transportation system that complies with all applicable sanitation requirements.
 - c. The sanitation coordinator(s) must have management’s commitment to sanitation and safety to effectively achieve the desired goals.
 - d. A designated staff member must also function to promote and protect the health and well being of all personnel in the Member facility according to established Safety Rules and Practices.
 - e. The Member’s sanitation program must include the following (note: Guidelines and instructions for each of the topics in the following list are presented in the *Food Safety and Handling Manual*):

- i. Care and upkeep of outside grounds and premises;
 - ii. Maintenance of warehouse as related to sanitation-safety;
 - iii. Maintenance of good housekeeping practices;
 - iv. Maintenance of good storage practices;
 - v. Maintenance of safety rules and practices;
 - vi. Maintenance of sanitary facilities;
 - vii. Training of workers in sanitation and safety practices;
 - viii. Control of pests inside and outside;
 - ix. Promotion of good receiving and shipping practices; and
 - x. Compliance with all applicable health and governmental regulations.
3. **Food-Transport Management** – The Member’s food transportation system must comply with the following guidelines relating to donor relations, program operations, and agency relations.
 - a. **Prepared and Perishable Food Donor Guidelines** – Donations must meet the following requirements:
 - i. Be provided by a regulated food business, with the exception of produce gleaning projects, food drives, and fresh produce drives;
 - ii. Be fit for human consumption and in compliance with local food handling regulatory requirements;
 - iii. Be stored and maintained at proper temperature and within allowable time frames;
 - iv. Be protected from air and environmental contamination during display and/or service;
 - v. Not include foods previously served to the public;
 - vi. Be first generation surplus foods, i.e. not previously reheated for second-time service; and
 - vii. Be packaged in first-use food grade packaging.
 - b. **Food Rescue Operation Guidelines** – Food-rescue operations must meet the following requirements:
 - i. Comply with all applicable regulatory requirements (If the jurisdictional authority does not inspect the program, the program must make a written request to that authority requesting inspection at least once per calendar year);
 - ii. Use a passive or visibly active temperature retention system to maintain temperatures within the allowable limits;
 - iii. Accept only those prepared and perishable food donations which comply with the Prepared and Perishable Food Donor Guidelines described in 3.a immediately above; non-perishable food donations are subject to the same guidelines as apply to non-perishable food donations destined for warehouses.

- iv. Effect a comprehensive safe food handling educational and training program for program staff and volunteers, equivalent to the Chefs Educational Seminar Series on Understanding Prepared Foods and the Transportation Module developed by The Chef and The Child Foundation of the American Culinary Federation (Key program staff must maintain current certification in safe food handling through a program of the health department, restaurant association, or other source with reciprocal certification authority, or be a registered dietician or dietetic technician);
 - v. Effect a comprehensive safe food handling educational and training program for recipient Agencies, equivalent to the Chefs Educational Seminar Series on Understanding Prepared Foods developed by The Chef and The Child Foundation of the American Culinary Federation (Key program staff must maintain current certification in safe food handling through a program of the health department, restaurant association, or other source with reciprocal certification authority, or be a registered dietician or dietetic technician);
 - vi. Develop a food safety evaluation program for recipient Agencies, including at a minimum an initial physical plant evaluation to determine the agency's ability to comply with regulatory requirements, a physical plant review at least once every two years to affirm same, and additional reviews based on need; and
 - vii. Identify and reinforce the need for thorough rinsing of fresh produce prior to consumption or use in any recipe.
- c. **Agency Monitoring Guidelines** – The “Member Agency Agreement” between the Member and the recipient Agency must contain language stating the agreement of the parties that the Agency will allow the Member to monitor the Agency regularly. Member staff conducting the monitoring must be certified in safe food handling as indicated in 3.b immediately above.
- i. Minor violations must be addressed by the development of a remedial action plan with reasonable time limits and adequate reporting mechanisms to ensure satisfaction of the plan. More serious violations may require follow-up visits.
 - ii. Those violations that create imminent health hazards will result in the Agency being placed on “hold” (or “partial hold”, as appropriate) status, during which it shall be ineligible to receive food from the Member. Reinstatement may be made only after the Member ensures correction of the deficiency and conditions that led to it.
 - iii. Agency files shall be maintained in accordance with the requirements stated in Section 2.A.3. of this Appendix B.
 - iv. The person(s) conducting the monitoring visit should review inspection reports and licenses issued by local regulatory authorities.

- v. A written report stating the findings of the monitoring visit must be maintained in the agency file, with written response from the agency verifying actions taken to correct any serious deficiencies.
4. **Salvage Program Management** – The Member’s salvage program must be designed and implemented in such a manner as to ensure the safety of the products processed. The physical layout, receiving, storing, and shipping practices, evaluation and sorting practices, quality control procedures, and record keeping practices must comply with all applicable Federal, state, and local regulations and statutes. At a minimum, this includes:
- a. Isolation of unsorted salvage from general product;
 - b. Maintenance of a clean and orderly sorting area;
 - c. Maintenance of effective pest control program in storage and sorting areas;
 - d. Use of sanitary, impermeable surfaces, utensils, and sinks;
 - e. Use of effective product sanitizing procedures;
 - f. Use of effective training procedures;
 - g. Use of effective product evaluation procedures; and
 - h. Maintenance of effective quality control procedures.

The America’s Second Harvest *Food Safety and Handling Manual* details the application of appropriate practices and procedures to assist the Member in maintaining an effective program.

E. Donor Relations

The Member must conduct active, ongoing product solicitation activities within its Service Area. Such activities shall be conducted in cooperation with the National Office Food Sourcing Department and other members as appropriate. The Food Sourcing Department shall be responsible for all marketing efforts with National Donors. Accordingly, the Food Sourcing Department shall consult with the Member when meeting with National Donors or potential national donors in the Member’s service area. The Member will be asked to participate in such visits as appropriate in the judgment of the Food Sourcing Department.

F. Disaster Response Activities

In the event of a disaster in the Member’s Service Area, the Member and/or the National Office will undertake primary responsibility for the allocation and distribution of food and essential non-food items to member agencies, disaster relief organizations (Red Cross, Salvation Army, VOAD, etc.) and other community agencies. The determination as to which organization will coordinate the response effort will be based on the classification of the disaster, following the guidelines in the America’s Second Harvest *Disaster Relief Manual*.

1. **The National Office – Roles and Responsibilities** – The National Office shall be responsible for identifying disaster situations and communicating the anticipated impact to all Members. The National Office, in accordance with the guidelines

provided in the Disaster Relief Manual, will classify the disaster. In Class 4 and Class 5 disasters, the National Office shall act as the overall coordinator of the response effort, serve as primary liaison with other national disaster response agencies, assist with the assessment of disaster severity and identification and coordination of supplemental resources for the affected Member(s), identify and provide for the transportation, lodging and meals of loaned staff from other Members to assist the affected Member(s), coordinate product donations from National Donors and the Members, coordinate public relations and communications activities, coordinate logistics relative to product allocation and paperwork, conduct appropriate national fundraising activities, and coordinate communications with and among affected Member(s). In all other disasters affecting multiple Member Service Areas or Service Areas where there are multiple Members, National Office staff will help coordinate disaster relief efforts among Members.

2. Member – Roles and Responsibilities

a. Advance Preparation

The Member shall establish those collaborative commitments and agreements with appropriate governmental agencies, community organizations, and member agencies as may be needed to facilitate effective, coordinated response activities. This would include, but not be limited to, determining alternative warehouse/office sites, alternative distribution, transportation, power, and communication systems, and alternative housing and feeding systems for staff and volunteers.

b. Division of Key Roles and Responsibilities for Member Staff

The Member shall develop a plan for meeting the staffing needs of any relief effort, establishing disaster response specific duties for existing staff to address such concerns as overall operations management, agency relations functions, media relations, external relations (including those with the National Office, VOAD, and government emergency management officials), record keeping, product acquisition, and volunteer management. Such planning must be built around the need for “normal” day-to-day service in the event that the Member’s full Service Area is not involved in the disaster situation. The Member shall request additional staff assistance from the National Office if needed. If additional personnel are requested, the National Office Disaster Services Manager must approve such expense (with the agreement of the Vice President of Member Support) and will respond to requests within 24-48 hours of submission.

c. Length of Disaster Relief Distribution/Factors to Consider

Knowing when to move from disaster mode to one of more normal proportions is not an easy or clear determination. At the national level, the National Office sets 12 weeks as a benchmark for commitment. The actual time is determined by assessing various factors at regular intervals during the relief period. Locally, this time frame may be extended due to the continued

level of involvement the Member has in the community. Certainly the speed at which victims are resettled, food businesses reopen, and numbers that the agencies serve return to those closer to pre-disaster conditions should be considered. The level of resources available to the Member plays a large part in how long relief efforts continue. At some point relief efforts may slow down and transform to a recovery mode because the volume and speed at which donations are forthcoming is reduced.

3. **Members – Roles and Responsibilities** – In the event of a Class 4 or Class 5 disaster, the specific response and level of involvement of the affected Member(s), the National Office, and other Members will be determined according to which of the following general scenarios best describes a particular disaster relief effort:
- Scenario 1 - the affected Member(s) is/are able to handle the relief effort on its/their own;
 - Scenario 2 - the magnitude of the disaster requires involvement of other Members to assist the local Member(s);
 - Scenario 3 - the local Member is out of commission or circumstances require that the National Office works with the nearest Member capable of acting as the primary relief coordinator;
 - Scenario 4 - the local Member is out of commission or circumstances require that the National Office act as the primary disaster relief coordinator.

Members are encouraged to offer product for use in disaster relief efforts outside their Service Area(s). If the disaster is a Class 4 or Class 5 disaster, the National Office will issue a request to all unaffected Members for a list of products available for the relief effort. Individual Members should offer their products at this time to the Logistics Department of the National Office on the form provided. Members should not make such offers directly to the affected Member(s). It is important that the Logistics Department coordinate the available product from the Members with the resources being sought outside the Network (from national donors, other relief organizations, et al).

If the National Office decides to accept an individual Member's product for the effort, transportation arrangements will be coordinated by the Logistics Department and the cost of transportation will be borne by the National Office.

Members are expected to make reasonable offers of staffing assistance for response efforts. The National Office shall maintain a database of staff available from the Members from which to request staff to send to the affected Member(s) or the national office. The National Office will cover the cost of transportation, food and lodging for such loaned staff out of its National Disaster Relief Fund.

4. Financial Policies and Procedures

- a. The National Office will establish and maintain a National Disaster Relief Fund with a minimum balance of \$200,000. As needed, the National Office will conduct an annual disaster relief appeal to maintain this fund.
- b. Expenses to be covered by the National Office from the National Disaster Relief Fund include:
 - Direct disaster costs (staff, travel, memberships, etc.) for the National Office;
 - Transportation of product;
 - Operating costs (rent, utilities, equipment, personnel) for approved additional warehousing for disaster relief product;
 - Travel and expenses for America's Second Harvest Network staff and other requested member personnel;¹
 - Purchase or rental of equipment and supplies; and
 - Member operating expenses relative to disaster relief efforts (see Sub-Section e immediately below).
- c. Interim financing in the form of an interest free loan (depending on funds available) may be made available to Members in declared Class 4 or 5 disasters to cover cash flow of disaster-related expenses. An Member needing assistance will make a request through the National Office Disaster Services Manager. The Vice President of Member Support and President will review the request within 24 hours. Specific repayment terms will be determined at the time of the loan approval.
- d. Members are encouraged to incorporate within their respective general reserve funds a disaster reserve fund to be used for local disaster relief efforts. The size of this fund should be based on history and likelihood of a local disaster, as well as the size and need of the population served. The initial size of this fund should be increased or decreased, as appropriate, based on local history and experience.
- e. In unusual circumstances, where despite every effort being made, local fund raising efforts have not been sufficient to cover local expenses, affected Members may apply to the National Office for reimbursement of their disaster-related operating expenses. Funds may be made available for Category 4-5 disaster-related efforts, typically those occurring within 12 weeks after a disaster. (Funds are available for relief efforts as opposed to recovery efforts.) Expenses that may be reimbursed to the affected Member(s) are the following:
 - overtime pay;

¹ If additional personnel are requested, the America's Second Harvest Disaster Services Manager must approve such expense (with the agreement of the Vice President of Member Support) and will respond to requests within 24 hours of submission.

- temporary help;
- transportation;
- additional warehouse space (rent, utilities, equipment and operating needs);
- other costs, due to extraordinary circumstances; and
- lost shared maintenance fees for product pulled from existing inventory by the affected Member(s)²

Applications must document the circumstances leading to the request, as well as the specific costs by category. The National Office Vice President of Member Support and President will review applications. A decision will be rendered in writing within ten business days of receiving the request.

- f. The National Office shall maintain a toll-free number for donations of product or cash to be activated in case of a disaster. The toll-free number will be available for use in PSA's, press releases, and other communications from the National Office or affected Members.
- g. In general, affected and all other Members may not charge handling fees (shared maintenance) to Agencies for disaster relief product. Product for disaster relief needs will be specifically solicited and transported to the affected Member(s). It is assumed that local disaster relief fund raising efforts and/or the National Office will cover other product handling expenses. However, handling fees may be charged in the following disaster relief situations:
- product from existing Member inventory distributed for disaster relief;
 - disaster relief product going to Agencies where local reimbursement agreements exist; or
 - non-disaster relief product going to Agencies not providing disaster relief (disaster relief product should not be distributed to these Agencies.)
- h. The National Office and the Network can provide the affected Member(s) with fundraising advice and assistance. Expertise on direct mail solicitation letters, special events and grant writing can be provided. Further, Members may secure funds within their respective communities for donation to the affected Member(s).

5. **Allocation Formula Adjustment** – Following a Class 4-5 disaster, when increased demand for product persists beyond the primary disaster relief effort and into the recovery period, the affected Member's allocation formula may be adjusted based on changes in the poverty level of the Member's Service Area attributable to the disaster.

² While America's Second Harvest encourages and appreciates offers of product for the relief effort, Members (other than the affected Member(s)) should not offer the product if they cannot absorb the loss of handling fees. Neither America's Second Harvest nor the affected Member(s) will reimburse a Member for this loss.

Local poverty level changes will be estimated using local food stamp, unemployment, and welfare statistics supplied by the affected member(s) but documented by outside, non-Member sources (e.g., FEMA, state human services offices).

Allocation adjustments will be made in accordance with the following procedure:

- the affected Member(s) should submit an adjustment request which includes the above mentioned statistics to the National Office Disaster Services Manager who, in conjunction with the Logistics Department, will determine the allocation adjustment;
- the initial adjustment will be determined approximately 12 weeks into the relief effort, at the juncture when the shift from relief to recovery activities occurs;
- an assessment and readjustment, up or down, of the allocation formula will be undertaken 90 days after the initial determination;
- the allocation adjustment may remain in effect for up to 24 months following the initial adjustment; the adjusted allocation formula will be phased out within this 24 month period according to the following schedule: 25% reduction 180 days after the initial assessment, then 25% reduction every six months thereafter to conclude the allocation adjustment at the 24 month mark (i.e., a 25% reduction at 6 months, at 12 months, at 18 months, and again at 24 months). If declines in the local poverty level surpass the reduction schedule, the allocation adjustment phase-out may be accelerated as determined by the National Office Disaster Services Manager in conjunction with the Logistics Department and in consultation with the affected Member(s).

G. Network Communications

The Member must have at least one "secondharvest.org" e-mail address (in the name of the Chief Administrator). If the Member chooses to auto-forward this address to a preferred email address, it must notify the National Office Technology Department of its decision to do so and of any future e-mail address changes.

SECTION 3:

NON-COMPLIANCE POLICIES

A. Guidelines for Determining Inadequate Service – For the purposes of Section V.5 of the Contract, a Service Area may be declared inadequately served if the level of service provided fails to meet each of the following three tests in paragraphs 1, 2 and 3 as well as a review by the National Council or its designated committee as described in paragraph 4:

1. The total pounds distributed in the previous twelve months by the Member(s) in the Service Area (pounds actually distributed in the Service Area) divided by the number of people in poverty equals or exceeds 45% of the Network median. If it is a shared Service Area, the distribution of the Members sharing the Service Area should be summed for purposes of this calculation.
2. The total pounds distributed in the previous twelve months by the Member(s) in the Service Area minus the USDA commodity and other products purchased with government funds distribution by the Member(s) in the Service Area divided by the number of people in poverty equals or exceeds 45% of the Network median. If it is a shared Service Area, the distribution of the Members sharing the Service Area should be summed for purposes of this calculation.
3. For the past two completed calendar years, the Member(s) has(ve) increased the total pounds distributed in the Service Area by at least an average of 5 percentage points greater than the Network median during that time period. If it is a shared Service Area, the distribution of the Members sharing the Service Area should be summed for purposes of this calculation.
4. Upon review of qualitative or other information to help determine if the Member(s) is underserving the Service Area, the National Council or its designated committee determines that there are not sufficient and unavoidable extenuating circumstances that would prevent the Member(s) from meeting at least one of the three tests above. Examples of information the NAC should review include:
 - a. Unusual hardships due to the Member's distance from food sources.
 - b. The lack of existence of an agency network to distribute food.
 - c. The local food and funding resources and opportunities in the Service Area.
 - d. An analysis of operational strengths/weaknesses including facility, transportation and related issues.
 - e. An analysis of the internal strengths/weaknesses of the Member's senior staff and Board of Directors.
 - f. The existence of an independent, non-member food bank or similar organization providing significant service in the Service Area.

The provisions of this Section 3.A operate solely for the purpose of Section V.5 of the Contract. They are not criteria for probation, suspension or termination.

B. Probation Procedures – The President of America’s Second Harvest – The Nation’s Food Bank Network may place the Member on probationary status for a predetermined period of time not to exceed six months for either of the following reasons:

1. The Member is not in material compliance with the Member Contract, and has failed to cure such non-compliance within fifteen (15) business days of receipt of written notice from the National Office of such material non-compliance.

OR

2. The Member has engaged or is engaging in practices which adversely affect or may adversely affect product integrity, donor relations, or the reputation of the America’s Second Harvest Network.

Written notice outlining the cause(s) for probation shall be provided to the Chief Administrator and Board Chair of the Member by the National Office within five (5) business days of the decision to place the Member on probation. While on probation, the Member will continue to receive National Office services, except that a full or partial “hold” may be imposed on the allocation of product for a period not to exceed six (6) calendar weeks, unless a mutually agreed extension is negotiated. After such “hold” is lifted, the Member will not be allocated the product which was held back during the disciplinary action. During probation, the National Office shall be available to assist the Member in formulating a plan of corrective action and provide technical assistance as needed. If the Member does not accomplish significant and identifiable improvement in the problem area(s) that led to probation within the prearranged time, the National Office may institute the suspension or expulsion process.

There shall be no appeal to Probation.

C. Suspension Procedures – The Member may be suspended from the Network, if, after being placed on probation for the reasons identified in Section 3. B. 1 & 2, the Member has failed, in the opinion of the President of America’s Second Harvest – The Nation’s Food Bank Network, by the end of the probationary period, to cure or remedy the problem area(s) outlined in the probation notice sent by the National Office to the Member, which led to the Member’s probation.

Written notice, including the reason(s) for suspension, the remedial action(s) necessary for reinstatement, and a description of the suspension and appeal procedure, shall be provided within five (5) business days to the Chief Administrator and the Board Chair of the Member as well as the Chair of the National Council or its designated committee chair.

The President of America’s Second Harvest – The Nation’s Food Bank Network shall notify appropriate Members, appropriate donors, and other appropriate parties as necessary of both the suspension and the resolution. While on suspension, the Member shall not receive allocations from the National Office, nor may other Members share product (national or local) with the suspended Member.

The Member may appeal the suspension by employing the Conflict Resolution procedures defined in Section VII of the Member Contract. The Member must initiate an appeal within ten business days of its receipt of the notice of Suspension. Should the Member prevail in the appeal, any withheld allocations shall be released to the Member.

If the suspension is for longer than ninety (90) calendar days or extends past ninety (90) calendar days, the National Council or its designated committee, by majority vote, must concur with the suspension or it is rescinded. The National Council (or its designated committee) may not unreasonably or capriciously overturn the decision of the President of America's Second Harvest – The Nation's Food Bank Network.

- D. Termination of Contract** – The President of America's Second Harvest – The Nation's Food Bank Network may terminate the Member's Member Contract if, after the Member has been placed on probation or suspended from America's Second Harvest as defined above, and such probation or suspension has not been lifted by the end of the applicable period, the President and a majority of the voting members of the National Council or its designated committee determines that the reason(s) for probation or suspension of the Member have not been addressed adequately to warrant reinstatement of the Member.

The President of America's Second Harvest – The Nation's Food Bank Network shall notify the Chief Administrator and Board Chair of the Member in writing within two (2) business days of such decision, stating the cause(s) for the termination and a description of the appeal procedure. All other Members, all National Office product donors, and any other appropriate parties will be notified by the National Office in a timely manner. The Member may rejoin the America's Second Harvest Network only through the full, standard application process for entities seeking to join the Network.

The Member may appeal the termination by employing the Conflict Resolution procedures defined in Section VII of the Member Contract. The Member must initiate an appeal within ten business days of its receipt of the notice of Termination. The effective date of the termination shall be the earlier of either the final decision on the appeal (assuming that the National Office prevails) or the lapse of the timeline for pursuing an appeal.



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LOGO & TRADEMARK
LICENSING AND USE GUIDELINES

The following terms define the permissions granted to and the parameters of use for the Member relative to its use of the marks identified on the final page of this document under the heading "Schedule of Trademarks, Service Marks and Trade Names" (the "Trademark Schedule").

1. Grant of License

A. General Use: The National Office represents that it is the sole owner of all right, title and interest in and to, and in and to any U.S. applications and registrations for, the trademarks, service marks and trade name(s) listed in the Trademark Schedule (collectively, the "Marks"). The National Office hereby grants the Member a non-exclusive, nontransferable royalty-free license for the term of this Contract to use the Marks as part of a corporate or "d/b/a" name in connection with, and to use the Marks in connection with, the Member receiving, handling, packaging, and distributing food and consumer household products and providing Member services through the Network (collectively, the "Activities"); provided, that the Member conducts the Activities in compliance with the National Office's quality control standards set forth in this Contract and the Member Compliance Standards (collectively, the "Quality Standards"). This license is not intended to convey any right, title or interest in the Marks to the Member except the right of non-exclusive use of the Marks in accordance with the terms hereof. Any rights not expressly granted in this Agreement are expressly reserved to the National Office. All use by the Member of the Marks and any goodwill developed thereby will inure to the benefit of the National Office.

B. Website/Internet Use: The Member may use the Marks on any Web site relating to the Activities, provided that the Member includes on any page of its Web site that contains the Marks the following sentence: "<REFERENCED MARK> is a registered trademark or trademark of America's Second Harvest – The Nation's food Bank Network in the U.S. and certain other countries and is used under license."; and includes on any page of its Web site that contains the Marks, and in close proximity to the Marks, a hyperlink directing the consumer to the National Office's Web site located at www.secondharvest.org. The Member may not use the Marks as part of the domain name or URL. Marks used on any Web site shall not include ®.

2. Quality Control – The Member agrees that, to protect its and the National Office's mutual interests and the valuable goodwill and reputation represented by the Marks, it will comply with the Quality Standards. The Member agrees that each use it makes of the Marks shall be in conjunction with the trademark or service mark registration notice indicating that the Marks have been registered with the Patent and Trademark Office of the United States or, the



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trademark notice "TM" or, the service mark notice "SM", as indicated in the Trademark Schedule, except for use of the Marks on a Web site, as provided in Section 1.B. above. The Member agrees that it will use the Marks only in connection with the Activities and will not modify, alter or change the Marks. The National Office reserves the right to inspect and approve in writing all stationery, labels, advertisements, literature and other media used in connection with the Marks prior to any use thereof, and the Member shall provide the National Office with copies of the foregoing upon request. Member shall submit, in writing, to the National Office any corporate or "d/b/a" name that includes the Marks prior to any use thereof by the Member for the National Office approval. The National Office shall approve or reject any such use within 21 days of receipt of the written request or the use shall be deemed approved. Notwithstanding the foregoing, the National Office reserves the right, upon written notice to the Member, to terminate the Member's right to use the Marks if such use: (i) disparages the National Office or any Member or is harmful to the goodwill that the National Office has acquired in and to its Marks; (ii) is inconsistent with the license granted by this agreement; (iii) does not comply with the Quality Standards; or (iv) in any way dilutes the value of the any Mark.

- 3. Term and Termination** – This Appendix C does not impose any independent obligation upon the National Office (1) to maintain the Member as a Member of America's Second Harvest, or (2) to provide any products or services to the Member. If this Contract is terminated under Section 3.D of Appendix B, the Member agrees to discontinue immediately all use of the Marks or any Marks confusingly similar thereto. The Member shall be under no obligation to recall or re-acquire any products bearing the Marks shipped prior to the effective date of termination or any advertising or other written material using the Marks placed prior to such date. The Member shall be permitted sixty (60) days to terminate its use of any written materials created prior to the date of termination.
- 4. Registration and Enforcement** – The Member shall take all reasonable steps and shall provide such materials, cooperation and assistance, as may be requested by the National Office at the National Office's expense, as may reasonably be required to assist the National Office in registering, protecting, maintaining, and enforcing the National Office's rights in the Marks. Should the Member become aware of any actual or suspected infringement or misuse of the Marks by third parties, the Member shall promptly notify the National Office. The Member shall be under no obligation to bring claims against any third party for actual or suspected infringement or misuses of the National Office Marks. The National Office shall assume full responsibility and authority for the conduct and direction of any litigation arising from any claim relating to the Marks brought against the Member, including sole discretion to settle, compromise or withdraw any such claims; provided however, Member shall indemnify the National Office for any such claims arising or resulting from any breach of this Contract by Member.



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- 5. Representations** – Except as otherwise set forth herein, including the representations set forth in Subsection 1.A., the National Office expressly disclaims all representations and warranties, express or implied, in connection with the Marks, including, but not limited to the implied warranties of title, merchantability, and fitness for a particular purpose.

In accordance with Section IV.4 of the Contract obligating the Member to use certain Marks on its letterhead and other public information media, the National Office shall assume all liability to, and shall indemnify, defend and hold harmless the Member, its Members, or any third party for any damages, losses or costs arising from breach of the terms hereof by the National Office or any claim relating to the Marks, whether such claim is based on warranty, contract, tort (including negligence or strict liability), or otherwise, except claims arising from any breach of this Contract by Member.

- 6. Ordering Rules** – The Parties agree that the Marks are licensed on the terms and conditions contained herein and that, should any conflict arise between or among the terms set forth in this Appendix C, the Member Compliance Standards, or any successor document or other relevant document of either the National Office or the Member, the terms and conditions of this Appendix C shall take precedence.

SCHEDULE of TRADE MARKS and SERVICE MARKS

Licensed Marks:

Mark	Reference	Type	Reg./App. Date	Renewal Date	
America's Second Harvest [®]	U. S. Reg. No. 2,577,091	Name	6/11/02	6/11/12	
America's Second Harvest – The Nation's Food Bank Network (and design)		U. S. Registration Pending Application #78/486326	Name and Logo	9/20/04	
flag/table design		U. S. Registration #2,469,625 (flag/table design only)	Logo	7/17/01	7/17/11
Community Kitchen [®]	U. S. Registration #2,600,044	Name	7/30/02	7/30/12	
Community Kitchen [™]	Canadian Registration Pending: #1070139	Name	8/8/00		
DonorExpress [®]	U. S. Registration #2,856,552	Name	6/22/04	6/22/14	
AgencyExpress [®]	U. S. Registration #2,925,419	Name	2/8/05	2/8/15	
Foodchain [®]	U. S. Registration #2,305,377	Name	1/4/00	1/4/10	
Foodchain's Community Kitchens [®]	U. S. Registration #2,301,479	Name	12/21/99	12/21/09	
Harvest Center [®]	U. S. Registration #2,803,122	Name	1/6/04	1/6/14	
Harvest Scan [®]	CANCELLED U. S. Registration #2,212,954	Name	12/22/98	12/22/08	
Hunger Has a Cure [®]	U. S. Registration #2,486,792	Name	9/11/01	9/11/11	
Hunger Has a Cure and design		U. S. Registration #2,273,623	Logo	8/31/99	8/31/09
Match A Meal	CANCELLED U. S. Registration #2,076,794	Name	7/1/97		
Visitors Against Hunger	U. S. Registration #2,317,834	Name	2/15/00	2/15/10	
Second Harvest [®] (U. S. Registration)	U. S. Registration #1,218,710	Name	11/30/82	11/30/12	
Second Harvest [®] (and design) (Canadian Registration)	Canadian Registration #TMA369568	Name	6/15/90		
Second Harvest and cornucopia design	(Original Logo) CANCELLED U. S. Registration #1,737,280	Logo			
Second Harvest and cornucopia design	 CANCELLED U. S. Registration #1,999,755	Logo			
Hunger's Hope [®]	U. S. Registration #1,984,672	Name	7/2/96	7/2/06	
Hunger: the faces and facts [®] and design			Logo		
Kids Cafe [®]	U. S. Registration #1,905,171	Name	7/11/95	7/11/05	
(Simulated Wooden Sign with Wording: "Kids Cafe")		U. S. Registration #1,898,322	Logo	6/6/95	6/6/05
Shop To Stop Hunger	U. S. Registration Pending Application #78/563475	Name	2/9/05		
Relief Fleet [®]	 U. S. Registration #2,566,417	Logo	5/7/02	5/7/12	

FEES SUMMARY

- 1. Member Fee** – The Member is responsible for the payment of an annual fee to the National Office. The fee is collected in installments and is payable upon receipt of a quarterly invoice issued by the National Office.

A. Member Fee Policy:

The Member Fee is determined by the National Office annual budgeting process. The Network has agreed to support the National Office at a level of up to 27% of its operating budget. The operating budget is defined as: National Office total annual operating expenditures exclusive of: 1) direct or indirect grants to members that are funded by restricted private donations and 2) discrete projects initiated by management with an estimated annual cost in excess of \$500,000.

The maximum total Network fees shall not exceed \$2,015,000 for the fiscal year beginning July 1, 2002. The cap would increase by 7.5% for each fiscal year thereafter. (That is, \$2,166,125 for the fiscal year beginning July 2003, \$2,328,584 for the fiscal year beginning July 2004, \$2,503,228 for the fiscal year beginning July 2005, \$2,690,970 for the fiscal year beginning July 2006, \$2,892,793 for the fiscal year beginning July 2007, etc.)

B. Current Member Fee Formula:

The Member Fee is defined by the following formula:

The fee is calculated with two components: a base fee and an incremental fee. The base fee is \$1,000. The incremental fee is derived by applying the Member's Goal Factor (as defined below) against the total anticipated member fees less the aggregate base fees. For example: Assuming a total anticipated member fees amount of \$2,503,228 for FY05, the aggregate base fees = \$213,000 (213 members x \$1,000 base fee). This leaves a total of \$2,290,228 to be collected in incremental fees. If the Member's goal factor is .75, its total Annual Fee = \$1,000 (base fee) + \$17,177 (\$2,290,228 x .75%) = \$18,177 total. A Member's "Goal Factor" is determined by a formula which is mutually agreed to by the National Office and the Members.

The Goal Factor is devised to define client service in a geographic area based on data obtained through the America's Second Harvest Hunger Study. This study is updated every four years and records, among other things, the income levels of clients throughout the network. Statistically this study provides better information about the nature of hunger relief efforts than any other known sampling. The 2001 Hunger Study showed that 73% of those accessing food assistance live at or beneath the poverty line; 22% have incomes between the poverty line and 185% of poverty; and 5% have incomes of 185% of poverty or more. Using these statistics to define the service characteristics for allocation of product, the recommended goal factor formula is:

$$\left[\frac{(0.73 \times \text{Poverty Population of Member Service Area} + 0.22 \times \text{Member Service Area Population Between Poverty and 185\% of Poverty} + 0.05 \times \text{Member Service Area Population Above 185\% of Poverty})}{(0.73 \times \text{U.S. Poverty Population} + 0.22 \times \text{U.S. Population Between Poverty and 185\% of Poverty} + 0.05 \times \text{U.S. Population Above 185\% of Poverty})} \right] \times 100$$

- 2. Handling Fees** – As defined in 26CFR Part 1.170A-4A(b)(3) of the Internal Revenue Code regulations (the “Regulations”), the Member may assess handling fees on the distribution of donated products to their member agencies, other Members, and/or Subsidiary Distribution Organizations (SDOs). The Regulations allow for such a fee if it “is small or nominal in relation to the value of the transferred property and is not determined by this value, and the fee is designed to reimburse the donee-organization [for purposes of this Contract, the Member] for its administrative, warehousing, or other similar costs”.¹

America’s Second Harvest and the Network have established several types of fees, which may be assessed in accordance with the above referenced section of the Regulations. America’s Second Harvest establishes a cap on the allowable fees that the Member may not exceed. These fees and their caps are defined below.

A. Basic Handling Fee:

- i. Agencies - The Member may charge agencies a handling fee not to exceed \$0.18 per pound.
- ii. Subsidiary Distribution Organizations (“SDOs”) - The Member may charge SDOs a handling fee not to exceed \$0.18 per pound.
- iii. Other Members - The Member may charge another Member a handling fee not to exceed \$0.09 per pound.
 - a. Referred Donations – The Member may charge another Member, an SDO, or a partner agency a handling fee for donations for which it refers the receiving Member, SDO, or partner agency to the Donor, but for which the referring Member does not actually handle the product. Such a referral fee may not exceed the cost of soliciting the donation, and in any case may not exceed \$0.02 per pound.

. Delivery Fee:

The Member may charge a delivery fee (not to exceed \$0.04 per pound) if:

- i. the receiving entity chooses the delivery option and agrees to the amount of the fee; and
- ii. the fee is listed as such and billed separately.

. Value Added Processing (VAP) Fee:

The Member may charge a processing fee if:

- i. the receiving entity agrees to the amount of the fee; and
- ii. the fee is listed as such and billed separately.

¹ Federal Register / Vol. 47, No. 21 / Monday, February 1, 1982 / Rules and Regulations / Page 4511.

The fee may be equal to the actual value added processing (“VAP”) costs. Examples include bulk product that has been processed or repackaged, salvage that has been sorted and is ready for distribution, or products that have been labeled or relabeled.

Certain costs may be included in the computation of the VAP Fee. These costs must be broken down and available to the National Office and other Members. The allowable costs include:

- i. Direct Costs
 - . Freight from donor or source to packer;
 - . Freight between co-packers;
 - . Packaging (cans, bottles, bags, jars, etc.);
 - . Labels;
 - . Boxes;
 - . Pallets;
 - . Fill charges from contract packers;
 - . Ingredients & Additives (fragrances, colors, stabilizers, etc.) ;
 - . Tape & film; and
 - . Lab testing costs.
- . Indirect Costs
 - . Repack personnel;
 - . Pro-rata indirect staff costs;
 - . Utilities;
 - . Set-up consultants;
 - . Maintenance; and
 - . Record keeping, unless in Section 3.B.ii. of this Appendix E.
- . Disallowed costs (which are already covered by the handling fee)
 - . Freight on finished goods to receiving bank;
 - . Storage space on finished goods; and
 - a. Handling (outgoing).

MISCELLANEOUS LEGAL PROVISIONS

1. Indemnification

- A. Each Party (as an "Indemnifying Party") agrees to indemnify, hold harmless and defend the other Party and its respective current and future officers, directors and affiliates (each an "Indemnified Party") from and against any claims, demands, actions, losses, costs, damages, liabilities and expenses (including reasonable attorneys' fees) ("Claims"), arising out of, or relating to any breach or non-fulfillment of any representation, covenant or other obligation of the Indemnifying Party under this Contract or any other document entered into by the Indemnifying Party under this Contract ("Breach").
- B. In the event that (i) a claim, demand or proceeding is asserted or instituted by a third party which could give rise to Claims for which an Indemnifying Party would be liable to an Indemnified Party under this Contract ("Third Party Claim"), or (ii) an Indemnified Party has a claim to be indemnified by an Indemnifying Party under this Appendix E Section 1 which does not involve a third party ("Direct Claim"), the Indemnified Party shall within 10 days of after acquiring knowledge of any such claim send to the Indemnifying Party a written notice specifying the nature and amount or estimated amount of the Claim (a "Claim Notice"). The Indemnified Party also shall timely provide the Indemnifying Party any additional information regarding such Claim that the Indemnifying Party reasonably requests. (No failure by an Indemnified Party to provide the notice and information specified in this Section 1.C shall relieve the Indemnifying Party of any liability under this Appendix E Section 1, except to the extent the Indemnifying Party has suffered actual prejudice due to such failure.)
- C. The Indemnifying Party may choose, by written notice to the Indemnified Party within 60 days of receiving a Claim Notice, to participate in or assume the defense of any Third Party Claim at its own expense and with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party assumes the defense, the Indemnifying Party shall not be liable to the Indemnified Party for any legal fees or associated expenses subsequently incurred by the Indemnified Party in connection with such defense, unless the Indemnifying Party specifically authorizes the Indemnified Party in writing to incur such expense; provided, however, that if the Indemnified Party reasonably concludes that its defenses to the Claim are different from or more extensive than those of the Indemnifying Party, (i) the Indemnifying Party may not assume (but may participate in, at its own expense) the defense of such Claim and (ii) the Indemnifying Party shall be liable for reasonable attorneys' fees and associated expenses incurred by the Indemnified Party in directing such defense.
- D. Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the Parties shall cooperate in such defense or prosecution, including, without limitation, by providing records, information, and testimony, and by

- attending meetings and litigation-related proceedings as the other Party may reasonably request.
- E. The Indemnifying Party shall not be liable under this Appendix E Section 1 for a settlement of any Third Party Claim agreed to without the Indemnifying Party's consent (which consent shall not be unreasonably withheld), unless the Indemnifying Party refuses to acknowledge liability under this Contract and/or declines to defend the Indemnified Party in such Third Party Claim.
- F. In consideration of donations made by National Donors and/or Food Donors (collectively, "Donors") through the National Office and the Network, the Member hereby agrees to indemnify, defend and hold harmless each Donor and each Donor's parent, subsidiaries and other affiliates, if any (collectively, the "Donor Indemnified Parties"), from and against any and all Claims for bodily injury to, or the death of, any person, and damage to, or destruction of, any property, caused by the negligence, recklessness or intentional misconduct of the Member, its directors, officers, employees, agents or independent contractors (collectively, the "Member Group") in connection with the handling or distribution by the Member Group of any products donated by any Donor, except for any Claims resulting from negligence, recklessness or intentional misconduct on the part of any Donor Indemnified Party or any other person or entity other than the Member Group, and provided that the Member shall be obligated under this indemnification provision, and shall have liability to any Donor Indemnified Party, only to the extent that the Member is insured against such obligation.
- G. Nothing in this Appendix E Section 1 will effect or be considered to have effected a waiver by the Member, the National Office or any Donor of any protection against liability which may be available under any state or federal "Good Samaritan Act" or similar statute.

2. Amendments

- A. Amendments to this Contract with respect to technical matters (for example, a regulatory change or change in standard industry practice) defined by or required by third-party regulatory entities or generally accepted industry practices shall be initiated and effected by the National Office as needed. The National Office shall provide the Members with notification of the proposed technical amendment together with documentation supporting the technical amendment at least 30 calendar days prior to effecting the change. The Member Services Department of the National Office upon reasonable request by the Member shall provide clarification and/or source data.
- B. Amendments to this Contract with respect to any and all other matters may be initiated by any segment of the Network. Issues relating to such proposed amendments shall be framed by the presenting segment of the Network or referred to the National Council to be framed. Opportunities for Network input shall be provided prior to final formulation of the proposed amendment (i.e. at Regional Meetings and/or the National Conference). If the discussions indicate that the issue is ready for

action, the proposed amendment will be presented to the Members by ballot. For a proposed amendment to pass, at least a Member Quorum must vote on the issue, and at least 67% of the votes must be in favor of the amendment. The Member Quorum is defined as 50% or more of the total number of Members that are members of the Network. Members will be given a minimum of ninety (90) calendar days and a maximum of one hundred twenty (120) calendar days notice to act on the ballot. If sufficient affirmative votes to pass the proposal are not received within the ballot period, the proposal fails. At the close of balloting, the President of America's Second Harvest – The Nation's Food Bank Network will be presented with proposed amendments which are approved by the Network in accordance with the procedure described in this Section 2.B. and will indicate acceptance or rejection of the proposed amendment in writing within five business (5) days. Representatives of the National Office and Members appointed by the National Council shall review this Contract in its entirety at least every five years.

3. Exemptions

The Member may request an exemption from any of the Member Compliance Standards; provided, however, no exemption may be granted which allows non-compliance with the law or generally accepted food handling practices. Any exemption will be granted for a specific time period: no exemption is permanent. The President of America's Second Harvest – The Nation's Food Bank Network may withdraw an exemption for cause with at least 60 days notice. Such withdrawal may be appealed by the Member in accordance with the Conflict Resolution procedures defined in Section VII of the Member Contract. In the event that the withdrawal is upheld, the time period for its effectiveness shall be reasonable so as to provide for a smooth transition.

A written request for exemption must be submitted to the Sr. Vice President of Member Services at the National Office. The request must reference the specific policy from which the exemption is being requested, demonstrate the need for exemption, and include a copy of a resolution adopted by the Member Board of Directors authorizing the request. The Member may request advice from the National Office staff in preparing the exemption request.

The President of America's Second Harvest – The Nation's Food Bank Network shall act upon exemption requests.

4. Other Legal Provisions

- A. Survival** - The rights and obligations of each of the National Office and the Member under Section 1 of this Appendix E, and the Logo and Trademark Licensing and Use Guidelines, as described in Appendix C, and the rights and obligations of the National Office and the Member to receive and pay shared maintenance or handling fees for products already delivered pursuant to this Contract, shall survive the termination of this Contract for any reason.

- B. Interpretation and Jurisdiction** - This Contract shall be governed by and interpreted in accordance with the internal substantive laws of the State of Illinois. The headings in this Contract are for ease of reference and shall not be considered in interpreting this Contract. Section 1.A of this Appendix E is provided for convenience only and shall not be considered in interpreting this Contract. All legal proceedings between the National Office and the Member permitted under this contract or related to any transactions contemplated hereby shall be brought either in the United States District Court for the Northern District of Illinois, Eastern Division, or in any Illinois State Court sitting in Chicago, Illinois, and in no other forum. Legal proceedings between Members (not involving the National Office) will be brought to an appropriate court in the state of the defendant Member. If any legal proceeding is brought which complies with this Appendix E.4.B, the National Office and the Member irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of such proceeding and any claim that such proceeding has been brought in an inconvenient forum.
- C. Legal Status of the Parties** - Each Party is entering into this Contract and performing its duties under this Contract as an independent contractor of the other Party and nothing in this Contract will be deemed to create a partnership, joint venture, franchise, agency or employment relationship between the Parties. No officer, director, trustee, employee or other agent of one Party shall be deemed to be an employee or agent of, or have the authority to bind, the other Party.
- D. Severability** -Whenever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract is held to be prohibited by or invalid under applicable law, that provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Contract.
- E. Construction** -Nothing in this Contract is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity other than the National Office or the Member. The Parties understand and acknowledge that they have each been represented by (or have had the opportunity to be represented by) counsel in connection with the preparation, execution and delivery of this Contract. This Contract shall not be construed against any Party for having drafted it.
- F. Assignment** -Neither Party to this contract will have the right to assign all or any part of this Contract without first obtaining the written consent of the other Party.
- G. Counterparts** – The Parties need not both sign the same physical copy of this Contract in order for this Contract to be valid. The Parties may each sign a separate physical copy of this Contract and exchange their signature pages and the two,



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Miscellaneous Legal Provisions

separately signed copies of this Contract will constitute one and the same Contract for legal purposes.

H. Notices - All communications, notices and exchanges of information hereunder will be in writing and will be deemed to have been given when one Party deposits same in the United States mail, first class delivery, postage prepaid, addressed to the other Party at the respective address and to the attention of the persons stated below, or at such other addresses or to the attention of such other persons as either Party may from time to time designate in writing to the other Party by notice:

Notices to the National Office:

America's Second Harvest
35 East Wacker Drive
Suite 2000
Chicago, Illinois 60601
Attention: President\CEO
Fax: (312) 263-5626

With a copy to:

DLA Piper Rudnick Gray Cary
203 North LaSalle Street
Chicago, Illinois 60601
Attention: Eric A. Berg
Fax: (312) 236-7516

Notices to Member:

With a copy to:
