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## **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.



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- 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 America's Second Harvest and the Network, the Affiliate 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 Affiliate, its directors, officers, employees, agents or independent contractors (collectively, the "Affiliate Group") in connection with the handling or distribution by the Affiliate 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 Affiliate Group, and provided that the Affiliate shall be obligated under this indemnification provision, and shall have liability to any Donor Indemnified Party, only to the extent that the Affiliate 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 Affiliate, America's Second Harvest 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 America's Second Harvest as needed. America's Second Harvest shall provide the Affiliates 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 Affiliate Services Department of America's Second Harvest upon reasonable request by the Affiliate shall provide clarification and/or source data.



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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 Affiliate 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 Affiliates by ballot. For a proposed amendment to pass, at least an Affiliate Quorum must vote on the issue, and at least 67% of the votes must be in favor of the amendment. The Affiliate Quorum is defined as 50% or more of the total number of Affiliates that are members of the Network. Affiliates 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 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 America's Second Harvest and Affiliates appointed by the National Affiliate Council shall review this Contract in its entirety at least every five years.

### **3. Exemptions**

The Affiliate may request an exemption from any of the Affiliate 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 may withdraw an exemption for cause with at least 60 days notice. Such withdrawal may be appealed by the Affiliate in accordance with the Conflict Resolution procedures defined in Section VII of the Affiliate 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 Vice President of America's Second Harvest's Affiliate Services Department. 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 Affiliate Board of Directors authorizing the request. The Affiliate may request advice from America's Second Harvest staff in preparing the exemption request.

The President of America's Second Harvest shall act upon exemption requests.

### **4. Other Legal Provisions**

A. **Survival** - The rights and obligations of each of America's Second Harvest and the Affiliate under Section 1 of this Appendix E, and the Logo and Trademark Licensing



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- and Use Guidelines, as described in Appendix C, and the rights and obligations of America's Second Harvest and the Affiliate 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 America's Second Harvest and the Affiliate 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 Affiliates (not involving America's Second Harvest) will be brought to an appropriate court in the state of the defendant Affiliate. If any legal proceeding is brought which complies with this Appendix E.4.B, America's Second Harvest and the Affiliate 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 America's Second Harvest or the Affiliate. 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.

