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## **AFFILIATE CONTRACT**

America's Second Harvest, an Arizona non-profit organization ("America's Second Harvest"), and \_\_\_\_\_, a \_\_\_\_\_ non-profit corporation (the "Affiliate"), by signing below shall have entered into this Affiliate Contract (this "Contract") as of \_\_\_\_\_, 200\_\_ (the "Effective Date").

The purpose of this Contract between America's Second Harvest and the Affiliate is to establish the Affiliate's membership in the national Network of America's Second Harvest, provide definition and guidance for the business relationship between the Affiliate and America's Second Harvest, 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.

**Affiliate** – An organization that operates as a Food Bank and/or Food Rescue Organization that is deemed by America's Second Harvest to have met all standards of admission into the Network, and which has executed an Affiliate Contract (that has not been terminated) with America's Second Harvest. In this Contract, "Affiliate" (when capitalized) specifically refers only to the Party that is entering into this Contract with America's Second Harvest.

**Affiliates** – The collective term for all organizations that have signed Affiliate Contracts (that have not been terminated) with America's Second Harvest. No category of Affiliate other than Food Banks and Food Rescue Organizations can be created without amending this contract.

**Affiliate Compliance Standards** - The standards described in Appendix B.

**Affiliate Fees** – The fees to be paid by the Affiliate to America's Second Harvest, as calculated in accordance with the method described in Appendix D to this Contract.

**Agency** – A non-profit organization or its legal equivalent that receives food from an Affiliate.



**America's Second Harvest** – The national [hunger relief] organization of the same name based in Chicago.

**America's Second Harvest Network or Network** – America's Second Harvest and all the Affiliates.

**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 an Affiliate 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 Affiliates 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).

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

**Network (The)** – See America's Second Harvest Network.

**National Affiliate Council** - The representative body of the Affiliates established by the America's Second Harvest Network and elected by the Affiliates.

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

**Party/Parties** – For purposes of this Contract, America's Second Harvest and the Affiliate 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 an Affiliate, serving agencies in part of an Affiliate's service area.

**Service Area** – A service area generally is an officially designated region in which one or more Affiliates provide service. As used in this Contract, “Service Area” will refer to the region in which the Affiliate 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 Affiliate.

## **SECTION II GUIDING PRINCIPLES**

By entering into this Contract, the Parties evidence their shared commitment to the following common goals and guiding principles of America’s Second Harvest and the Affiliates:

1. America's Second Harvest and the Affiliates 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. America's Second Harvest and the Affiliates 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.
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 AMERICA’S SECOND HARVEST**

America’s Second Harvest will have the following obligations under this Contract:

1. Meet all Affiliate Compliance Standards, as set forth in Appendix B, which are applicable to America’s Second Harvest.
2. Maintain and devote resources to ongoing food and grocery products procurement and an allocation system agreed upon by America’s Second Harvest and the Affiliates as the core function of the organization.
3. Provide the Affiliates 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 Affiliate on public policy and awareness issues and activities.

5. Provide, maintain and operate a Network-wide, internet-based communication system for all Affiliates.
6. Provide technical assistance to the Affiliate on operational matters.
7. List the Affiliate's name and contact information, as appropriate and as agreed to by the Affiliate, 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 Affiliates after providing the Affiliates with sufficient advance notice of such proposed activities. In the event circumstances do not permit such notice and input, America's Second Harvest will consult the National Affiliate Council.
9. Make reasonable efforts to coordinate America's Second Harvest fundraising, marketing and public relations activities conducted in the Affiliate's Service Area.
10. Collect and share hunger-related information and reports with the Affiliate.
11. Facilitate the Network's response to disasters.
12. Maintain a repository of Network operational and program data.
13. Involve the Affiliate in the ongoing strategic planning process of America's Second Harvest.
14. Work with and utilize input from the National Affiliate Council for evaluating programmatic activities and effecting changes.
15. Monitor relevant laws and regulations for changes and inform the Affiliate accordingly. Comply with changes in relevant laws and regulations.
16. Enforce compliance with Affiliate Compliance Standards and recommend revisions to standards when appropriate.
17. Not engage in programs that are outside the normal activities of a Food Bank or Food Rescue Organization unless approved by a majority of the Affiliates nor engage in activities in any Service Area, without the consent of the Affiliate assigned to such Service Area, except through or in cooperation with such Affiliate. Before permitting the establishment of any new program or alternative means of distribution, America's Second Harvest will first negotiate with the Affiliates in good faith to determine the terms of the

new program or alternative means of distribution. Each Affiliate will have the right at its sole option to participate in the new program or alternative means of distribution. An Affiliate's decision not to participate in the new program or alternative means of distribution shall not be grounds for probation, suspension or termination of the Affiliate.

18. Provide, at the time of each America's Second Harvest monitoring report, a report of the adequacy of service in the Affiliate's Service Area.

#### **SECTION IV** **CERTAIN OBLIGATIONS OF THE AFFILIATE**

The Affiliate will have the following obligations under this Contract:

1. Meet all Affiliate 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 Affiliate Fees in a timely manner.
4. Identify itself as an Affiliate of America's Second Harvest, using the phrase "an affiliate of America's Second Harvest" 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, America's Second Harvest in an accurate and timely manner.
7. Provide disaster relief in accordance with the Affiliate 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 Affiliate if done by the Affiliate.

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**SECTION V**  
**SERVICE AREA**

1. The Affiliate's Service Area is described in Appendix A. Except as provided in paragraph 5 below, each Affiliate 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 Affiliate agrees to permit its Service Area to become an Overlapping Service Area. America's Second Harvest shall not operate or allow to be operated any America's Second Harvest 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 Affiliate is expected to solicit and accept product donations from Food Donors in the Service Area. The Affiliate is expected to conduct fund-raising activities in the Service Area.
3. Unless otherwise noted in a Local Agreement between two Affiliates, distribution of food, solicitation and acceptance of product from donors and conduct of fund-raising activities are restricted to an Affiliate's Service Area, with the following exceptions:
  - A. Each Affiliate may engage in grant writing activities directed at corporations and foundations outside of the Affiliate's Service Area provided the funding policies of the corporations and foundations include the Affiliate's Service Area; and
  - B. Each Affiliate may engage in media outreach and communication activities involving media markets that include the Affiliate's Service Area.
4. Affiliates 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 America's Second Harvest to the shared service area;
  - B. Allocate funds and/or funders provided by America's Second Harvest 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. America's Second Harvest may permanently reassign a portion of the Affiliate's service area to another Affiliate, or expand the boundaries of another Affiliate's service area to overlap with part or all of the Affiliate'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 Affiliates and approved by America's Second Harvest;
  - B. Following the guidelines described in Section 3.A of Appendix B (as applied to the entire service area), America's Second Harvest determines that agencies are inadequately served in the Affiliate's Service Area; and/or
  - C. Following the guidelines described Section 3.A of Appendix B (as applied to the entire service area), America's Second Harvest determines that another Affiliate is willing and able to provide food bank or food rescue services not adequately provided by the incumbent Affiliate 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, America's Second Harvest will notify the Affiliate 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 Affiliate within forty-five (45) calendar days of the delivery of such notice. The Affiliate's written response to America's Second Harvest shall include evidence refuting the determination or its plan for meeting the needs of the inadequately served area. In the event America's Second Harvest accepts the Affiliate's evidence or finds their amended service plan acceptable, the Affiliate shall be given reasonable time to implement the plan and return the area to adequate service. In the event that America's Second Harvest rejects the evidence and does not find the amended service plan acceptable, America's Second Harvest may reassign the affected portion of the Affiliate's Service Area. America's Second Harvest will inform the Affiliate of any reassignment in writing, and provide its justification of such decision, no more than forty-five (45) calendar days after it receives the Affiliate's response to America's Second Harvest's initial notice to the Affiliate that the Affiliate's Service Area is inadequately served. The Affiliate may appeal America's Second Harvest's decision and the reassignment shall be stayed until the appeal is resolved through the Conflict Resolution Process provided for in Section VII.

If America's Second Harvest 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 Affiliate's Service Area will be made without the consent of the Affiliate.

## **SECTION VI AFFILIATE FEES**

The Affiliate Fees are set forth in the Fees Summary in Appendix D. Any amendments to those Fees will be developed with input from the Affiliates and will have the prior approval of the Affiliates, 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 Affiliates, and between Affiliates and America's Second Harvest, 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 Affiliates and/or America's Second Harvest 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 America's Second Harvest and one or more Affiliates, or (ii) between two or more Affiliates) 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 Affiliate may terminate this Contract by providing written notice of such a decision by its Board of Directors to America's Second Harvest at least thirty (30) calendar days prior to the effective date of such termination.
  - B. America's Second Harvest may terminate this Contract only as provided in Section 3.D. of the Affiliate Compliance Standards, as described in Appendix B.
2. On termination of this Contract, the Affiliate shall immediately cease to be an Affiliate 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 Affiliate agrees that upon termination of this Contract by either Party, the Affiliate shall immediately cease to represent itself in any fashion as an Affiliate 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 Affiliate 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 Affiliate's full-time and part-time employees and its Board of Directors that the Affiliate is no longer an affiliate of America's Second Harvest;
  - C. Reclamation by America's Second Harvest at its discretion and sole cost of all product on hand at the Affiliate site from National Donors;
  - D. Within thirty (30) calendar days, submission of all product receipt and distribution records to America's Second Harvest, 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 America's Second Harvest to address special circumstances not dealt with in Sections A through D above.

4. America's Second Harvest agrees that upon termination of this Contract by either Party, America's Second Harvest shall immediately cease to represent the former Affiliate as an Affiliate 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 Affiliate from America's Second Harvest 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 America's Second Harvest board members, full-time and part-time employees that the Affiliate is no longer an Affiliate of America's Second Harvest;
  - C. Return of pro-rated annual Affiliate Fees to the Affiliate within thirty (30) calendar days; and
  - D. Any other action as may reasonably be requested by the Affiliate 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 America's Second Harvest and the Affiliate with respect to the subject matter of this Contract and supersedes any previous agreements, oral or written, between America's Second Harvest and the Affiliate 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.



**AFFILIATE CONTRACT  
BALLOT VERSION**

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, America's Second Harvest and the Affiliate have signed this Contract as of the Effective Date.

|                                  |                                 |
|----------------------------------|---------------------------------|
| <b>AMERICA'S SECOND HARVEST:</b> | <b>[AFFILIATE NAME]:</b>        |
| _____                            | _____                           |
| [Name of Authorized Signatory]   | [Name of Authorized Signatory]  |
| [Title of Authorized Signatory]  | [Title of Authorized Signatory] |

**List of Appendices**

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