

FOOD SERVICE AGREEMENT

THIS FOOD SERVICE AGREEMENT ("Agreement") is made as of July 1, 2017, by and between the PUBLIC SCHOOLS OF BROOKLINE (the "School Food Authority" or "SFA"), having a principal place of operations at 333 Washington Street, Brookline, MA 02445, and WHITSONS NEW ENGLAND, INC. having a principal place of business at 1800 Motor Parkway, Islandia, New York ("Whitsons" or "FSMC"). The SFA and Whitsons are each referred to herein as a "Party" and, collectively, as the "Parties".

WITNESSETH:

WHEREAS, the SFA has advertised for and has solicited proposals pursuant to a Request for Proposal ("RFP") for the purpose of managing and operating the SFA's food service program for the SFA's students, employees, visitors and guests at its premises located at all of the campuses within the jurisdiction of the SFA (each and collectively, the "Facility"); and

WHEREAS, Whitsons submitted a proposal (the "Proposal") and was selected as the successful vendor in the RFP process; and

WHEREAS, the Parties agree that the terms and conditions under which Whitsons will provide such services shall be incorporated into this written Agreement;

NOW, THEREFORE, in consideration of the mutual agreements set forth below and other good and valuable consideration, acknowledged by each of the parties to be satisfactory and adequate, Whitsons and the SFA agree as follows:

SECTION 1. PURPOSE OF THE CONTRACT

1.1 Appointment of Whitsons. The SFA hereby retains Whitsons and grants to Whitsons the exclusive right to provide and manage the SFA's Food Service Program, all as more fully described in Section 5 below.

1.2 General Purpose. Whitsons will be responsible for all of the SFA's Food Service Program and will act in good faith and according to industry standards to prepare and serve wholesome, nutritious and appetizing meals to the reasonable satisfaction of the SFA. Whitsons shall comply with the applicable provisions of the National School Lunch Act as amended, the School Breakfast Program and the Department of Agriculture regulations and any requirements imposed by any applicable state agency.

1.3 Independent Contractor. Whitsons shall be an independent contractor and shall retain control over its employees and agents. No employee, agent or representative of Whitsons shall be entitled to receive any benefits of employment with the SFA, including, without limitation, salary, overtime, vacation pay, holiday pay, sick leave, health insurance, life insurance, pension or deferred compensation. Whitsons shall be free to perform services for any other SFA, company or organization during the term of this Agreement; nothing herein, however, shall relieve Whitsons of its contractual obligations under the remainder of this Agreement.

1.4 Regulation and Access. The SFA may supervise and regulate Whitsons' daily operation of the Food Service Program with respect to all matters (including working conditions for the Food Service Program employees and safety, sanitation, and maintenance of the Food Service Program facilities). The SFA may make reasonable regulations with regard to all such matters, and shall give

Whitsons written notice thereof.

1.5 Contract Documents. Whitsons shall perform the services and/or shall deliver the goods as set forth in the specifications in the solicitation documents. The provisions of the solicitation documents, including, without limitation, the RFP, Instructions, Form for Proposal, General Conditions and Specifications, as applicable, together with the Proposal, are incorporated herein by reference. In the event of a conflict between a provision of any of those documents and a provision of this Agreement, the provision of this Agreement shall govern. To the extent any provision of this Agreement required by law is inconsistent with other, non-statutory sections in this Agreement, any statutorily-mandated provisions contained herein shall control.

SECTION 2. DEFINITIONS

In addition to other capitalized terms defined elsewhere in this Agreement, the following terms shall be defined as set forth below:

2.1 Accounting Period: All accounting periods shall be based on actual calendar month.

2.2 Cash Equivalents: An amount equal to the Operating Expenses attributable to those special functions of SFA for which there are no cash receipts.

2.3 Charge: A fee established by Whitsons for goods or services provided by Whitsons.

2.4 Deficit: The excess of the total of Operating Expenses and Management & Administrative Fees over Net Sales.

2.5 Equivalency Factor: The amount of \$3.83 used to determine the number of Meal Equivalents served by Whitsons. If this Agreement is renewed after the Initial Term and if the Equivalency Factor changes in any Renewal Term, Whitsons will receive an automatic adjustment to its Administrative Fee to equitably compensate Whitsons for the loss of Administrative Fee due to the change in the Equivalency Factor.

2.6 Food Service Program: The preparation, service and sale of food, beverages, and other related items at the Facility, and general operation of the food services at the Facility, including the operation of the National School Lunch Program and/or the School Breakfast Program, and/or the Special Milk Program, and/or the After School Snack Program, as well as other auxiliary businesses described in the RFP, Exhibit A, Item 8.

2.7 General Support Services Allowance: Allowance for overhead services provided by Whitsons for (i) the supervision of Whitsons employees by executives not assigned to the Food Service Program; and (ii) General support provided by Whitsons' accounting, tax, marketing, training, human resource, law and internal audit departments. The General Support Services Allowance is also referred to in this Agreement as Administrative Fee.

2.8 Gross Hourly Wages: The total wages earned by an hourly employee (including overtime) without deducting taxes or other items.

2.9 Gross Management Salary: The total salary earned by a salaried employee, including bonuses, if any, without deducting taxes or any other items.

2.10 Gross Salaries and Wages: The total of Gross Management Salary and Gross Hourly Wages.

2.11 Gross Sales: All sales of food, beverages, and other related items in the Food Service Program, plus sales and use taxes and federal and state reimbursements.

2.12 Meal Equivalent: A meal provided by Whitsons determined by dividing the total of cash receipts, other than from sales of National School Lunch and Breakfast Program meals or Cash Equivalents, by the Equivalency Factor.

2.13 Net Sales: Gross Sales, less sales and use taxes.

2.14 Opening Expenses: All costs, charges and expenses relating to the opening of the Food Service Program including, but not limited to, pre-opening labor expenses, supervisory and training expenses including travel, meals, lodging expenses, charges for finance and operating manuals, advertising, forms, opening promotions and opening office supplies.

2.15 Operating Expenses: All costs, charges and expenses incurred in connection with the Food Service Program including, but not limited to, the following: (i) Goods, including food, beverages, merchandise and supplies, and the distribution of such goods; (ii) Labor, including Gross Salaries and Wages, taxes (e.g. FUTA, FICA, SUI, disability, worker's compensation, etc.), benefits, retirement plans and the cost of administering such plans and services; (iii) Other costs, charges and expenses related to the Food Service Program, including, but not limited to, Opening Expenses, medical benefits charges for workers' compensation, fingerprinting and background check expenses for employees assigned to the Facility, business insurance (e.g. comprehensive liability, property, umbrella, etc.) and other insurance (including performance bond) maintained pursuant to the Agreement; out-of-pocket travel and related expenses of employees assigned to the Facility subject to the mutual agreement of the parties; sales and use taxes; and costs of licenses, permits, information systems or software fees, promotional or proprietary materials, flowers, decorations, overnight delivery, if necessary, Smallwares, minor equipment, repair and maintenance of equipment and other services related to the Food Service Program.

2.16 Pattern Meal: A meal eligible for government reimbursement.

2.17 Smallwares: Dishware, glassware, flatware, utensils and similar items used in connection with the Food Service Program.

2.18 Surplus: The excess of Net Sales over the total of Operating Expenses and Management and Administrative Fees.

SECTION 3. COMMENCEMENT & TERMINATION

3.1 Commencement and Term. The term of this Agreement shall be for one (1) year beginning on July 1, 2017 and continuing until June 30, 2018 (the "**Initial Term**") unless terminated by either Party as hereinafter provided. The Parties may by mutual agreement renew this Agreement for up to three (3) successive one (1) year renewal periods (each a "**Renewal Term**" and, collectively with the Initial Term, the "**Term**"). [7 CFR 210.16(d)] To the extent possible, each Party will endeavor to give the other Party written notice at least sixty (60) days prior to expiration of the Term of its intent to renew or not renew

this Agreement for a Renewal Term. Any extension or renewal of this Agreement shall be contingent upon the fulfillment of all provisions relating to USDA donated foods in accordance with this Agreement.

3.2 Termination. The SFA may terminate this Agreement with or without Cause by giving sixty (60) days' prior notice in writing to the FSMC of its intention to do so. The FSMC may terminate this Agreement with Cause by giving sixty (60) days' prior written notice in writing to the SFA of its intention to do so. [7 CFR 210.16(d); OMB Circular No. A-102, 7 CFR Part 3016.36(i)]

3.3 Cause; Force Majeure. If either Party breaches any provision hereof ("Cause"), the non-breaching Party shall give the other Party written notice of such Cause and of its intention to terminate the Agreement as contemplated in section 3.2. If the Cause is remedied within sixty (60) days of receipt of notice, the notice shall be considered satisfied and withdrawn. If such Cause is not remedied within such 60-days' notice period, the Party giving notice shall have the right to terminate the Agreement at the expiration of such 60-day notice period. However, with the exception of payment obligations for prior performance under this Agreement, neither Party shall be responsible to the other for any losses or failure to perform its respective obligations under the Agreement when such failure is caused by conditions beyond the Party's reasonable control or other *force majeure* event or the damage or destruction of real or personal property due to such causes, including without limitation fire, explosion, flooding or other water condition, act of God, civil disorder or disturbances, strikes or other labor disputes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules or regulations, or other like causes.

3.4 Penalty Provision for Breach. If a Party has breached the terms of this Agreement, and the breaching Party has not cured the breach as set forth in Section 3.3, the Party affected by such breach may elect to pursue any and all available administrative, contract or legal remedy, or the following sanctions: (i) for a first violation, a written reprimand; (ii) for a second violation, a \$50.00 penalty; or (iii) for a third violation, a \$100.00 penalty. For the purposes of the foregoing, a single violation means an event of the same or similar kind, no matter the duration or numbers of personnel, equipment, students or meals involved. [7 CFR 210.16(b)b); 7 CFR Part 3016]

SECTION 4. MANAGEMENT SERVICES & SPECIAL FUNCTIONS

4.1 Management Services. Whitsons will provide all management, administrative and dietetic services required for the efficient supervision and operation of SFA's Food Service Program as specified in the RFP and in the Proposal and further set forth in this Agreement. The resident food service director's salary (including bonus, if any) and fringe benefits will be a direct reimbursable cost of operation. Any bonus shall be reasonable in amount and shall be paid in accordance with the approved Operating Budget.

4.2 Special Functions. Whitsons will provide food services for administration and student related functions as reasonably requested by the SFA. Such requests must be received at least ten (10) days prior to the date of the function. All food and labor costs for these functions will be billed directly to the school organization involved, unless otherwise specified by the SFA, and shall not be supported by the nonprofit foodservice account funds. Labor costs billed for these special functions shall not be double billed to the Food Service Program. Any special arrangements regarding other costs which might be incurred at these functions may be negotiated between Whitsons and the organization. The Parties understand and agree that the Charges for these special functions shall be separate and apart from the Management Fee, Administrative Fee and other costs of operating the Food Service Program.

SECTION 5. FOOD SERVICE; WHITSONS RESPONSIBILITIES

5.1 Food Service Program. Whitsons shall provide nutritional breakfasts, lunches, milk service (if applicable) and à la carte items in accordance with the following terms and conditions: (i) Food shall be prepared in the SFA's food service facilities for service at the Premises; (ii) Prices to be charged for meals during the Term shall be approved by the SFA; (iii) Prices for à la carte items, faculty and staff meals, snack foods and beverages shall be approved by the SFA; (iv) All free and reduced price lunches and all ticketed lunches shall be administered by Whitsons on behalf of the SFA. In order to offer à la carte food service, Whitsons shall also offer free, reduced price and paid reimbursable meals to all eligible children. [7 CFR § 210.16(a)] The SFA shall be responsible for establishing and notifying parents and guardians of program criteria for providing free and reduced price meals for eligible students. It shall be the joint responsibility of SFA and Whitsons to protect the anonymity of children receiving free or reduced price meals and to establish methods for insuring such anonymity. Nothing herein, however, shall allow either the SFA or Whitsons to violate any provision of the Commonwealth's Public Records law, M.G.L. c. 66, §10 and M.G.L. c. 4, §7, the Federal Education Privacy Rights Act (FERPA), or any other federal or state law.

5.2 Special Diets. Whitsons shall supply any special diets for students required for medical reasons when prescribed and approved in writing by a licensed medical authority for students with a disability in accordance with Section 504 of the Rehabilitation Act of 1973 and attendant regulations. A medical statement shall be provided to the nurse or nurses designated by the SFA and shall be signed by the licensed medical authority and shall specify the nature of the child's disability or medical condition and the major life activities affected thereby, the reason the disability or medical condition prevents the child from eating the regular school meal, the food(s) to be omitted from the child's diet and the specific substitutions needed. The nurse shall then communicate such information to Whitsons as is necessary to allow it to prepare such requested special diets. Any additional cost incurred to provide substitutions shall be considered allowable costs of the food service program, and the SFA shall reimburse Whitsons therefor in accordance with this Agreement.

5.3 Food Committee and Advisory Board. Whitsons shall participate in Food Committee meetings at dates and times agreed upon by Whitsons and the Food Committee members. Whitsons shall cooperate with the SFA in the establishment of an advisory board ("Advisory Board") composed of such members as the SFA shall designate, including parents, teachers, students and a Whitsons' representative, to assist in planning menus. [7 CFR 210.16(a)(8)]

5.4 Menus. Whitsons shall consult with the Advisory Board regarding the overall operation of the SFA's Food Service Program, including menus. Whitsons will submit and adhere to a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210, for approval to the SFA. Any menu changes may only be made with the approval of the SFA. Seasonal changes, special school programs, Farm to School promotions, or shifts in student preferences shall be taken into consideration in menu preparation. All menus will be nutritionally acceptable to the SFA and in accordance with applicable regulations.

5.5 Nutrition Education. Whitsons shall promote the nutritional education aspects of the SFA's Food Service Program and cooperate in the efforts of the SFA to coordinate these aspects with classroom instruction. The FSMC shall promote maximum participation in the Child Nutrition Programs using the plans described in the RFP, Exhibit O, and Plans to Increase Program Participation.

5.6 Resource Management (Compliance with Revenue from non-program foods): For all contracts, including fixed price per meal contracts, awarded on a per meal basis and with revenues from non-program foods sales converted into meal equivalents to which the fixed price cost is applied, the FSMC will annually provide information on food costs and revenues, including the food costs for reimbursable meals, food cost for non-program foods, revenue from non-program foods, and total revenue. 7CFR §210.14

SECTION 6. EMPLOYEES

6.1 Personnel Obligations. Whitsons shall be responsible for its employees on its payroll including, but not limited to, responsibility for recruitment, employment, promotion, payment of wages, pension benefits, layoffs and termination, and shall comply with all applicable laws and regulations related thereto. Whitsons' employees and agents shall comply with and observe all applicable rules and regulations concerning conduct on the premises which the SFA imposes upon its employees and agents. Whitsons shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and state employment taxes and payroll insurance relating to its employees including, but not limited to, income, social security and unemployment taxes and worker's compensation costs and charges. The SFA has no authority to resolve disputes between Whitsons and its employees.

6.2 Equal Opportunity Employer. Neither Party shall discriminate because of race, color, religion, sex, age, national origin, creed, disability, or status as a Vietnam veteran, sexual orientation (provided that the object of such orientation is not a minor), genetic status, gender identity or other protected class, all as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities concerning Food Service employees. Whitsons shall conform to all civil rights requirements applicable to SFA in the conduct of the Food Service Program. In addition, Whitsons affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to, Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans with Disabilities Act; M.G.L. c. 151B, and any additions or amendments thereto. [7 CFR 3016.36(i)]

6.3 Work Hours. Whitsons is expected to recommend the number of work hours and number of positions at each school location. Whitsons and the SFA shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations. [7 CFR 3016.36(i)] The SFA shall use its best efforts to notify Whitsons in advance of any anticipated closing due to inclement weather or other emergency. If advance notice is not given and/or a decision is made by the SFA to delay opening or close the Facility after Whitsons' employees have already reported to work, any labor costs incurred by Whitsons as a result of such closing, delayed opening or early dismissal (including as a result of requirements contained in a collective bargaining agreement) shall be charged to the SFA as an Operating Expense of the Food Service Program.

6.4 SFA employees. Whitsons shall direct and supervise any SFA employees assigned to the Food Service Program, provided that SFA shall be responsible for obligations described in Section 6.1 with respect to such SFA employees.

6.5 Background Checks. Whitsons shall adhere to applicable state and federal regulations,

including the CORI statute codified at M.G.L. c. 71, §38R, in screening prospective employees. Whitsons shall comply with criminal background checks and fingerprint regulations (“**CORI Checks**”) required by law for all new hires, the cost of which shall be an Operating Expense of the Food Service Program. It is understood and agreed that CORI Checks for all existing employees of the SFA assigned to the Food Program have already been completed, and new background checks and fingerprinting shall not be required for such employees, but the SFA shall provide to Whitsons evidence of such CORI Checks.

6.6 Regulations. Whitsons shall instruct its employees to abide by the policies, rules and regulations with respect to its use of SFA premises as established by the SFA from time to time and which are furnished in writing to Whitsons.

6.7 Removal of Employee. The SFA may provide Whitsons with written notice that it requires the removal of an employee of Whitsons, if, after due investigation, it is reasonably demonstrated that such employee violated health requirements or conducted himself/herself in a manner detrimental to the physical, mental or moral well-being of students, staff or faculty, as long as such removal is non-discriminatory and not in violation of any Federal, State or local laws. In the event of the removal of any such employee, Whitsons shall promptly restructure its staff to avoid any disruption in service. If FSMC incurs any costs, including legal fees, retroactive wages and damages, as a direct result of any personnel action requested by the SFA, such costs shall be considered direct costs of the Food Service Program and FSMC shall charge the SFA for such costs as Operating Expenses.

6.8 Emergency Devices. All Food Service Program personnel assigned to each school Facility shall be instructed on the use of all emergency switches, fire and safety devices in the kitchen and cafeteria areas.

6.9 Student Workers. The use of student workers or students enrolled in the SFA is prohibited without prior SFA approval.

6.10 Senior Management; Non-Solicitation. Whitsons shall inform the SFA prior to hiring senior management positions for the direct operation of the SFA’s Food Service Program. All persons to be hired as Food Service Director or Assistant Food Service Director must be presented for the SFA’s evaluation and approval, such approval or rejection to be in writing and approval not to be unreasonably withheld or delayed. If approval has not been granted or withheld in writing within ten (10) days after a candidate has been presented to the SFA, approval shall be deemed to have been granted. FSMC shall provide qualified management/professional employees to manage the Food Service Program and supervise all employees employed therein. During the term of this Agreement and for one (1) year thereafter, SFA shall not solicit Whitsons management, supervisory or professional employees (including without limitation any Vice President, Director, Manager, Chef, Dietician or Nutritionist) providing services under this Agreement to work in a similar food service capacity whether at the SFA food service Facility or elsewhere, nor will SFA permit the employment of said individuals by others in any operation providing food service throughout the SFA district. SFA further covenants and agrees not to hire, nor allow to be hired by others to perform work on behalf of SFA or on SFA premises, any Whitsons management/supervisory/professional employees providing services under this Agreement for a period of one (1) year following the employee's termination of employment with Whitsons. If at any time during the term of this Agreement or upon the expiration or termination of this agreement, SFA nevertheless hires, causes or allows to be hired, a Whitsons management/supervisory/professional employee in contravention of this paragraph, then SFA in recognition of Whitsons' considerable investment in attracting and training such employee agrees to pay a fee to Whitsons of two times the

annual salary of said employee as liquidated damages. Said fee shall be due and payable upon the hiring of said employee by SFA or SFA's affiliate, agent or contractor.

SECTION 7. EQUIPMENT, FACILITIES & UTILITIES

7.1 Facilities and Equipment. The SFA shall make available without any cost or charge to Whitsons, the facilities and equipment necessary for Whitsons to provide food service hereunder, including, but not limited to, area(s) of the Facility agreeable to both parties in which Whitsons shall render its services, kitchen equipment, Smallwares, suitably furnished office space and facilities for the safekeeping of funds. The SFA shall provide all equipment necessary for the efficient and safe operation of the Food Service Program. All equipment used in connection with the operation of the Food Service Program shall be maintained by the SFA.

7.2 Condition of Facilities and Equipment. The facilities and equipment provided by each Party for use in the Food Service Program shall be in good condition and maintained to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health. Whitsons will take proper care of all furniture, fixtures, equipment and facilities provided by the SFA and shall timely notify the SFA of any known deficiencies. Whitsons shall not be held accountable for pre-existing conditions or normal wear and tear. At the expiration of this Agreement, Whitsons will return to the SFA the cafeteria premises and all furniture, fixtures and equipment furnished by the SFA in the condition in which received, except for ordinary wear and tear and damage by the elements, and except to the extent that such premises or equipment may have been lost or damaged by vandalism, fire, flood or other acts of God, or theft by persons other than employees of Whitsons, or for any other reason beyond the control of Whitsons. The FSMC will provide the SFA with a planned equipment upgrade for budget purposes in the month of September preceding the start of the SFA's next fiscal year. The FSMC may not limit the SFA's selection of vendors for such equipment in any way.

7.3 Utilities. The SFA shall furnish at its expense, light, power, hot and cold water, telephone service, high speed internet connection and other utilities as are necessary for the operation of the Food Service Program hereunder.

7.4 School's Use of the Facilities. The SFA is encouraged to utilize Whitsons for catering and other food service needs in addition to the School Lunch and/or Breakfast and/or Special Milk Programs. However, the SFA reserves the right, in its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled meal periods, provided such sales or dispensation do not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs and is otherwise in compliance with all Federal, State and local laws, including those governing the sale of competitive foods.

7.5 Extracurricular Activities. If the SFA utilizes the Food Service Program facilities for extracurricular activities before or after the SFA's regularly scheduled lunch or breakfast period, the SFA shall return facilities and equipment to Whitsons in the same condition as received, normal wear and tear excepted.

7.6 Rental Facilities For Community Use. The SFA retains the right to rent or donate food service facilities during non-school hours or weekends, provided that such activity does not interfere with the normal Food Service Program operation. When such functions take place, the SFA may require that a member(s) of the food service staff be on duty to maintain the safe use of SFA owned equipment and/or to provide access to the facilities. Whitsons shall be reimbursed for the cost of its own staff to be

utilized at said functions. Said cost shall not be considered an expense of the food service program. The SFA shall return the facilities and equipment to Whitsons in the same condition as received, normal wear and tear excepted.

7.7 HACCP. Pursuant to 7 CFR § 210.16(a)(7), the FSMC will develop and follow the Hazard Analysis Critical Control Point (HACCP) plan which complies with the Massachusetts State Department of Education and Massachusetts Department of Public Health standards for the process approach to HACCP implementation. Each preparation kitchen and serving facility shall have a current HACCP Plan that complies with the requirements of the Massachusetts Department of Elementary and Secondary Education and the Massachusetts Department of Public Health. The plan shall include standard operating procedures, process identification, control measures, regular monitoring, corrective actions, and record keeping.

SECTION 8. MAINTENANCE, REPAIRS & SANITATION

8.1 Maintenance. The SFA shall furnish all building maintenance and all repairs to the Food Service areas without cost to FSMC and shall replace, repair and maintain its equipment, except when damage results from the negligence of FSMC or its employees. The SFA shall keep such equipment and Facilities maintained in a safe operating condition such that no FSMC employee is exposed to or subjected to any unsafe situation which would violate the Occupational Safety and Health Act including, but not limited to, the general duty and the specific duty clauses thereof or any other similar federal, state or local law or regulation. However, if equipment provided by the SFA becomes inoperative, hazardous or inefficient to operate, FSMC shall have the right to undertake repairs or replacements at the expense of the SFA if the SFA fails to do so after having been given a reasonable amount of time to correct the equipment deficiency. The SFA shall at its expense, provide maintenance personnel and outside maintenance services, parts and supplies for properly maintaining the Facilities and its equipment.

8.2 Cleaning. The SFA will be responsible for the cleaning and maintenance of floors, windows, walls, light fixtures, plumbing connections, electrical service, ceilings, hoods, ducts, grease traps and the general care of the cafeteria, dining, service and kitchen areas, and for painting within the cafeteria and dining areas. The foregoing notwithstanding, the FSMC will only be responsible: (a) with respect to walls, for cleaning walls to a height of six (6) feet, (b) with respect to vents and ducts, for cleaning same below ceiling level, and (c) with respect to hoods, for cleaning the exterior of hoods only. Whitsons will be responsible for the routine cleaning of the kitchen, serving areas, dish rooms and storerooms, including the ordinary and routine cleaning of counters, sinks, stoves and operating equipment (e.g. freezers, refrigerators, utensils) used in connection with the operation of the Food Service Program.

8.3 Sanitation; Trash Removal; Recycling. The SFA shall have designated areas for the deposit and removal of all garbage and trash. Whitsons shall provide its own trash bags and shall bring refuse to designated refuse collection areas at the Facility, and will cooperate with and participate in all SFA mandated recycling programs, provided that the SFA shall provide, at its expense, all necessary waste receptacles, including those required for the proper recycling of all waste materials (including without limitation food waste, plastic and paper) as required by Federal, State and/or local law. The SFA shall provide, at its expense, for the daily removal of waste (including recyclable waste such food waste, plastic and paper) and garbage and for regular extermination services.

SECTION 9. INVENTORY; PROCUREMENT

9.1 Inventory. Whitsons shall purchase, on the SFA's behalf, all food and other supplies required under this Agreement. Such food and supplies shall be kept separate and apart and title thereto shall remain with the SFA at all times. Whitsons and SFA shall jointly take inventory of all purchased food and supplies at both the beginning and the end of this Agreement. The SFA shall have access to the purchase records of the food purchased for review and audit as deemed necessary in the judgment of the SFA. Whitsons and the SFA shall inventory the equipment and commodities owned by the SFA at the beginning of the contract year including, but not limited to, flatware, trays, chinaware, glassware, kitchen utensils and food both purchased and government-donated commodities. Whitsons shall be responsible for reimbursing the SFA for all loss beyond normal usage noted at the year-end inventory of the equipment, except loss caused by the negligence or willful misconduct of the SFA or SFA's employees.

9.2 Purchasing. Whitsons will purchase all food for the SFA at the lowest prices possible, which prices shall be reasonable and necessary, consistent with maintaining the quality standards prescribed by the SFA, including taking advantage of all local trade discounts. All procurement transactions must meet procurement standards set by the United States Department of Agriculture. Transactions shall be conducted in a manner so as to provide maximum open and free competition, as provided by law. In the event that Whitsons, either directly or indirectly or through one of its affiliates furnishes products or services necessary for the efficient operation of SFA's Food Service Program, the charge to SFA shall be competitive with the cost of obtaining such products or services from an independent source in the open market;

9.2.1 Whitsons will request, receive and inspect food delivered by vendors and forward a list of bills when billing the SFA in accordance with regulations.

9.2.2 Whitsons shall maintain adequate storage practices, inventory and control of federally donated foods in conformance with the SFA's agreement with the applicable state agency, if any.

9.2.3 In accordance with the Buy American Provisions of 7 CFR Part 250, to the maximum extent practicable, the FSMC shall purchase domestic commodities or products for use in meals served under the National School Lunch Program and the School Breakfast Program. A "domestic commodity or product" is one that is produced in the United States and is processed in the United States substantially using agricultural commodities that are produced in the United States. "Substantially" means that over 51 percent of the final processed products consist of agricultural commodities that were grown domestically. [7 CFR 210.21(d); 7 CFR 250.23]

9.2.4 Any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices shall prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA shall be used.

9.3 Rebates. All payment discounts (except prompt payment discounts), rebates and allowances obtained from vendors must go to the SFA's food services account. Whitsons shall credit the SFA with any discounts obtained from vendors, suppliers or distributors for goods procured for the SFA's account. In accordance with USDA Regulations, SFA is not entitled to a credit for prompt payment discounts unless SFA pays the relevant third party suppliers directly or provides an advance payment to Whitsons for such costs.

9.4 Purchasing Specifications.

9.4.1 Unless otherwise specified by the Brookline Wellness Policy or Guidelines, the FSMC shall comply with the following Minimum Purchasing Specifications:

i. Meat Poultry and Fish:

1. Beef: All beef cuts will be U.S.D.A. Top Range Choice from steers and heifers only. Primal cuts that will be purchased will include round, loin, flank, rib and chuck. No plate or shank cuts will be used. All ground beef will meet the I.M.P. 136 standard.
 - a. Pork: U.S.D.A. No. 1, cured, smoked and fresh;
 - b. Poultry: U.S. Grade A;
 - c. Fish: Fresh and frozen, Grade "A" where grade exists;
 - d. Pre-prepared Meat Products: Meet above specifications for beef, pork, poultry, fish and include Child Nutrition (CN) Label or Product Analysis and Nutritional Analysis documentation.

ii. Dairy (Minimum Standards).

iii. Milk: Fat free and 1% fat, Grade "A" under 30,000 bacterial count per c.c.

iv. Eggs: U.S.D.A. Grade "A", Fresh Fancy, no storage eggs to be used.

v. Cheese: U.S. Grade "AA".

vi. Canned Fruits and Vegetables: U.S. Grade "A" or U.S. Fancy only.

vii. Fresh and Frozen Fruits and Vegetables: No. 1 quality, i.e. Apples, U.S. Extra Fancy; Winter Pears, Extra Fancy No. 1; Tomatoes (greenhouse) Fancy No. 1; Broccoli, Fancy; Carrots, U.S. Fancy; etc.

viii. Condiments: U.S. Grade "A".

ix. Miscellaneous Groceries: Highest grade obtainable. U.S. No. 1.

9.4.2 The FSMC shall provide condiments. The FSMC may use fillers or extenders, such as "alternate protein products," in foods served upon approval of the SFA and as regulated by the U.S. Department of Agriculture (USDA). If the SFA participates in the Special Milk Program, the FSMC shall serve milk that meets requirements for reimbursement. The FSMC will not purchase foods that are available as donated commodities.

SECTION 10. ACCOUNTING, RECORDS & AUDITS

10.1 Consolidation of Account. Whitsons shall maintain accounting and records for each of the SFA's divisions as well as for the consolidated whole covered by this Agreement. The FSMC's financial accounting shall be in accordance with DESE rules and regulations, applicable state laws, and Generally Accepted Accounting Principles (GAAP).

10.2 Records. Whitsons shall maintain such records as the SFA will need to support its Claim of Reimbursement and shall report thereon to the SFA promptly at the end of each calendar month, at a minimum. Such records shall be available for a period of three (3) years from the date of final payment under the Agreement for inspection and audit by representatives of the applicable state's Departments of Education and Agriculture, United States Department of Agriculture and the United States General Accounting Office at any reasonable time and place; except that, if audit findings have not been resolved, the records shall be retained beyond the three (3)-year period as long as required for the resolution of the issues raised by the audit. All FSMC records pertaining to the SFA shall be maintained at the SFA while this Agreement is in effect. If the laws of the Commonwealth so require, such records shall be retained

as prescribed therein. Such records include, but are not limited to, Daily Cash Reports, Edit Check Worksheets, Milk Rosters and Summary of Meal/Milk counts. A SFA official will review, in accordance with regulation, records maintained by Whitsons for the purpose of preparing monthly reimbursement vouchers. Whitsons shall observe all federal, state, and local law related to accounts. Whitsons accepts liability caused by Whitsons' negligence for claims assessed as a result of Federal or State audits/reviews corresponding with the SFA's period of liability under applicable regulations. *[7 CFR 210.16c(1) and 7 CFR 210.23c]*

10.3 Availability of Records. The SFA, the applicable state's Departments of Education and Agriculture, United States Department of Agriculture, or Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers and records of Whitsons which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts and transcriptions. *[7 CFR Part 3016]*

10.3.1 Reimbursement Records. Whitsons must retain records to support the SFA's Claim of Reimbursement of the daily number of meals served, by type. These meal counts must be reported daily. *[7 CFR 210.16(c)(1)]*

10.4 Revenue Records. Whitsons shall retain revenue records broken down by source, type and category of meal or food service (e.g., à la carte sales, reduced price and full price National School Lunch Program, School Breakfast Program meals (if applicable) and vending machine sales, etc.). All revenues from the operation of an auxiliary business/program, less all relevant cost and expenses, shall accrue to the SFA and be reported on the monthly profit and loss statement provided to the Deputy Superintendent for Administration and Finance.

10.5 Invoice Statement. All invoices submitted by Whitsons must represent that articles have been furnished or services rendered before payment can be made to Whitsons from the SFA's food service account.

10.6 Detailed Description. All invoices submitted by Whitsons must include a detailed description of the goods, supplies, services or other items being submitted for reimbursement.

10.7 Taxes and Assessments. Whitsons will pay when due all federal, state, local and other governmental taxes or assessments in connection with the services rendered hereunder. With regard to sales tax, the Parties will determine by mutual agreement and in accordance with relevant law if any of the services rendered or items furnished hereunder are subject to sales tax. Even if SFA is tax exempt, SFA may be liable for the collection and remittance of sales tax to the applicable state department of revenue for some of the services or items. If any of the services or items are subject to sales tax, Whitsons is responsible for the appropriate collection of sales tax and the reporting of such to the SFA. The SFA is responsible for remitting the sales tax to the appropriate state department of revenue. If the Parties are unable to resolve any dispute or controversy regarding the taxability of any of the services or items, such dispute or controversy shall be settled by a relevant ruling by the applicable state department of revenue.

10.7.1 The SFA shall pay when due all federal, state, local and other governmental use and property taxes or assessments arising in connection with the Facility, equipment, offices and utilities. Whitsons shall pay when due all license and permit fees in connection with services rendered hereunder. The SFA shall reimburse Whitsons for all license and permit fees paid in connection with the Food Service Program.

SECTION 11.

FINANCIAL, PURCHASING & MEAL PAYMENT

11.1 General Provisions. All Food Service Program Fees shall be specifically stated in this Agreement. Such fees may be calculated on a “cents per meal” or “flat fee” basis. Whitsons will operate, administer, and manage the Food Service Program for SFA in accordance with the financial arrangements as set forth in this Agreement. This Agreement is not permitted to and does not contain a “cost-plus-a-percentage-of-cost” or a “cost-plus-a percentage-of-income” provision. [7 CFR 210.16(c)] SFA represents and warrants that all financial and operating information it has provided to Whitsons is true, complete and correct and presents fairly and accurately all items of revenue and expense of the Food Service Program to be managed by Whitsons herein in conformity with generally accepted accounting principles consistent with that of the preceding years and applied in accordance with past practice.

11.2 Operating Expenses. Whitsons will charge and invoice the SFA monthly a sum not to exceed the amount necessary and reasonable to cover Whitsons’ Operating Expenses (as defined in Section 2.15 above) incurred in connection with the Food Service Program. In furtherance, but not in limitation of the foregoing, payroll-related taxes (e.g. FUTA, FICA, SUI, disability, worker’s compensation, etc.) and business insurance expenses (e.g. comprehensive liability, property, umbrella, etc.) will be invoiced at the fixed rate set forth in Whitsons’ Proposal and/or current school year’s food service budget, as approved by the SFA. Approval of the food service budget shall constitute approval of these Operating Expenses. Such invoices shall be due and payable within 30 days of receipt. Whitsons will provide a reconciled monthly statement with costs listed in the following categories: (i) Operating Expenses, and (ii) Management Fee and Administrative Fee. Whitsons shall either (i) separately identify for each cost submitted for payment to the SFA the amount of that cost that is allowable (that which can be paid from the non-profit food service account) and the amount, if any, that is not allowable (must be paid from General Funds account and not from the food service account), or (ii) exclude all unallowable cost from its billing documents and certify that only allowable costs are submitted for payment, and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. Unallowable costs may not be paid from the Food Service Program account and may only be paid from the SFA’s General Funds. The determination of the allowable costs will be made in compliance with applicable USDA regulations and National School Lunch Program and Commodity School Program regulations as well as Office of Management and Budget circulars. [7 CFR 210.21(i); 210.21(f)(ii)(A) & B; 210.21(f)(iii)]

11.3 Rebates. All costs charged to the SFA in management fee and cost-reimbursable contracts shall be net of all trade discounts and rebates received by Whitsons. Any fee (including a procurement fee) that is directly tied to the amount of discounts, rebates, and applicable credits to be returned to the SFA is an unallowable nonprofit school food service account cost and will not be paid. Whitsons shall identify the amount of each discount, rebate or applicable credit on each bill or invoice and whether the amount is a discount, rebate, or in the case of some other form of applicable credit, the nature of that credit. This information shall be reported to the SFA on a monthly basis. If approved by the Massachusetts Department of Elementary and Secondary Education, the SFA may permit Whitsons to report this information on a less frequent basis than monthly, but no less than annually. [7CFR§210.21(iv)]

11.3.1 Whitsons must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to the conclusion of the Agreement and shall maintain documentation of costs and discounts, rebates and other applicable credits and must furnish such documentation upon request to the District, the

Massachusetts Department of Elementary and Secondary Education and the USDA. [7 CFR 210.21(v)& (vi)]. Whitsons' method is as follows: For four successive quarters after the conclusion of the contract, FSMC shall conduct quarterly audits to determine if there are any applicable credits, discounts or rebates that are applicable to SFA. If any such credits, discounts or rebates are identified, FSMC will provide a report of such to SFA along with a credit on any amount owed to FSMC or payment in the form of a check if there is no outstanding balance due to FSMC from SFA.

11.4 Administrative and Management Fee; Invoicing. During the Initial Term, Whitsons shall charge SFA, and SFA shall pay Whitsons, an annual Administrative Fee of \$75,000.00 and an annual Management Fee of \$40,000.00, for a total fee of \$115,000.00 (the "**Food Service Program Fee**"). The Food Service Program Fee shall be invoiced on a monthly basis, and shall be due and payable in ten (10) equal monthly installments within twenty (20) days of invoice date, together with the invoiced Operating Expenses. If the SFA pays Whitsons' invoices promptly within the 20-day payment terms, the SFA shall be entitled to a 10% discount off of the applicable monthly Management Fee. The SFA shall promptly notify Whitsons of any disputed amounts and the reason for such dispute. The SFA and Whitsons agree to cooperate with each other in good faith to resolve all such disputes. In any event, the SFA shall pay that portion of any invoice that is undisputed. Whitsons shall be entitled to charge the SFA a late payment fee on any invoiced amount that is past due, at the rate (the "**Interest Rate**") that is the lesser of (i) 1 ½ % per month or (ii) the maximum rate allowed by law, provided that such late payment fee shall be paid from the SFA's General Funds and not from the non-profit food service account. The right of Whitsons to charge interest for late payment shall not be construed as a waiver of Whitsons' right to receive timely payment. Some of the food products purchased on behalf of SFA in connection with the Food Service Program may be "Perishable Agricultural Commodities" within the meaning of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)) ("**PACA**"). Where applicable, (a) such food products are sold subject to the statutory trust authorized by section 5(c) of PACA and (b) Whitsons retains a trust claim over these commodities and all inventories of food or other products derived from these commodities until full payment from SFA is received. In the event that FSMC incurs legal expense in enforcing its right to receive timely payment of invoices hereunder, SFA agrees to pay FSMC's reasonable attorney's fees and other costs, provided that such fees and costs shall not be paid from the non-profit food service account. For any Renewal Term, the Food Service Program Fee shall be adjusted annually, upward or downward, based on any percentage increase or decrease in the Consumer Price Index (CPI), Food Away from Home for the Boston-Brockton-Nashua Area, for the 12 months preceding the most recent monthly calculation available when the renewal to this Agreement is prepared.

11.5 Guaranteed Return. Whitsons and SFA shall work together to ensure a financially sound Food Service Program. Whitsons guarantees a no cost or breakeven food service operation (the "**Guarantee**"), including the Management fee and/or the Administrative fee. This Guarantee shall be calculated based on the total revenues generated by the program on an annual basis, less Whitsons' total costs of operating the program as identified in Whitsons' monthly and annual operating statements provided hereunder. If the Guarantee is not achieved, then Whitsons will subsidize the difference up to 100% of the Food Service Program Fee. This will be the SFA's exclusive remedy for Whitsons' failure to achieve the Guarantee, and in no event shall Whitsons be liable for any amount in excess of the Food Service Program Fee.

11.5.1 Assumptions. The Guarantee is based on, and subject to, the following conditions and assumptions remaining in effect throughout the Initial Term and/or the Renewal Term:

- (i) reimbursement rates for National School Lunch Program and National School Breakfast

Program meals, as the case may be, will not be less than the rates estimated in Whitsons' Proposal (for the Initial Term) or in effect for any prior school year (for any Renewal Term), and the Program will receive the \$0.06 federal reimbursement increase published by the USDA;

(ii) the value of government donated commodities and/or cash in lieu thereof will not be less than the value of government donated commodities and/or cash in lieu thereof estimated in Whitsons' Proposal or received during the prior school year, and the mix and quantity of government donated commodities shall not change from the mix and quantity received the prior school year so as to increase actual food costs over the level of projected food cost set forth in the RFP and Proposal;

(iii) the number of days meals are served during the school year will be not less than 179 days;

(iv) the number of serving periods, locations, serving times and types of service will not differ from that listed in the RFP;

(v) the student enrollment for the Term of the Agreement will be not less than 1,841 students in the High School and 5,623 students in the K-8 schools per school year;

(vi) the level of wages, salaries, fringe benefits and health costs will not exceed those proposed and listed in the original Proposal;

(vii) the actual costs charged to the Food Service budget by the SFA (including labor and employee benefits) shall not exceed the projected Operating Expenses as set forth in the RFP (for the Initial term) or the proposed Operating Budget (for any Renewal Term);

(viii) service will not be interrupted as a result of fire, work stoppage, strike or school closing;

(ix) food costs (including milk) during the Initial Term or any Renewal Term shall not increase by an amount greater than Three Percent (3%). For the purposes of this provision, food costs shall be measured by comparing the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (1982 = 100% base period), Food Away From Home for the Northeast Region ("CPI") (or a comparable index if that index is not available), in effect on May 31 prior to expiration of the current Term to the CPI in effect on May 31 of the previous year;

(x) selling prices of Menu Pattern Meals and *à la carte* selections will be not less than those included in the Proposal or the applicable Operating Budget;

(xi) SFA and its representatives, including but not limited to, school principals, teachers and SFA employees, shall fully cooperate with Whitsons in the implementation of the Food Service Program;

(xii) there shall be no competitive food and beverage sales immediately prior to, after or during the meal service times, and the SFA shall fully cooperate with Whitsons to limit the expansion of competitive food sales in order to maximize the gross receipts and other non-cash sales of the Food Service Program, and to ensure that any such competitive sales are in compliance with Federal, State and local law;

(xiii) legislation, regulations and SFA's Wellness Policy or practice shall remain the same as those at the time of the original Proposal;

(xiv) to the extent applicable, SFA shall approve Whitsons' recommended changes relating to food service staff levels and/or staff schedules based on the operational needs of the Food Service Program;

(xv) The SFA shall have timely submitted and certified all claims for reimbursement, except where such failure or delay is due solely to an act or omission of Whitsons;

(xvi) Whitsons has not taken into account the effect of meals and/or snacks distributed under the SFA's humanitarian meal policy in establishing the Guarantee. Any meals and/or snacks distributed under any such policy that would negatively affect the Guarantee will result in an appropriate adjustment thereof; and

(xvii) There shall be no change in any other operational parameters set forth in the RFP or in any other assumptions contained in the Proposal that would have a material adverse effect on the Guarantee.

In the event the foregoing conditions are not met during the Term, the Operating Budget and Guarantee shall be adjusted by an amount equivalent to any increased cost or loss of revenue attributable to the change in such conditions.

11.6 Surplus Revenues. Any surplus revenues existing after deducting the approved operating expenses, Administrative Fee and Management Fee from verified food service receipts and all Federal and State reimbursements shall remain with the SFA.

11.7 Investment. Whitsons will promptly fund certain improvements to the SFA's Facility to facilitate the performance of the services hereunder in an amount not to exceed Ninety Thousand, Five Hundred Ninety Two Dollars (\$90,592.00) (the "Investment"). The scope and specifications for such Investment shall be as mutually agreed in writing by the Parties in advance. The SFA shall hold title to real estate fixtures, equipment, and other items funded by the Investment. Whitsons will amortize its Investment on a straight-line depreciation basis over a period of four (4) years, and SFA shall be invoiced for and shall repay such Investment on a monthly basis as an additional expense above and beyond the agreed upon Management Fee and Administrative Fee and other reimbursement costs of the Food Service Program. If the Agreement is terminated prior to the full amortization of the Investment, the SFA shall promptly select one of the following options: (i) retain any equipment or other items funded by the Investment and continue to make payment to Whitsons in accordance with the agreed monthly amortization schedule until the Investment is fully repaid; or (ii) retain any equipment or other items funded by the Investment and promptly pay (or cause any successor FSMC to pay) Whitsons the unamortized portion of the Investment in full within fifteen (15) days of termination of the Agreement. In the event such payment(s) owing to Whitsons are not paid to Whitsons within ten (10) days of the scheduled payment date(s), SFA agrees to pay interest on such amounts at the Interest Rate from the scheduled payment date until the date paid. SFA agrees that no Food Service Program funds shall be used to pay any interest. The right of Whitsons to charge interest for late payment shall not be construed as a waiver of Whitsons' right to receive timely payment.

SECTION 12. USDA DONATED COMMODITIES

12.1 Benefit of SFA Only. To the maximum extent possible, Whitsons shall utilize USDA donated foods made available by the SFA and shall not purchase foods that are available as USDA donated foods. Whitsons agrees that any USDA-donated commodities received by the SFA and made

available to Whitsons must accrue only to the benefit of and be used only in the SFA's nonprofit school food service. All refunds received from processors must be retained by the SFA. [7 CFR 210.16(a)(6)]

12.2 Proper Use and Handling. Whitsons further accepts liability for negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods. Whitsons shall maintain accurate and complete records with respect to the receipt, use/disposition, storage and inventory of donated foods. Failure by Whitsons to maintain records required under the Agreement shall be considered factual evidence of improper distribution or loss of donated foods. The SFA is responsible for obtaining restitution from Whitsons in connection with any claim for improper distribution, use or loss of, or damage to donated foods. [7 CFR 250.12(b)(4)]

12.3 Value of USDA Donated Foods. Whitsons shall credit the SFA for the value of all donated foods received for use in the SFA's meal service in the school year (including both entitlement and bonus foods) and include the value of donated foods contained in processed end products in accordance with the contingencies in 7 CFR 250.51 (a). The method used to credit the District for the donated foods shall be crediting by disclosure, which will occur on the billing documents submitted each month.

12.3.1 FSMC will ensure compliance with the requirements of subpart C of CFR part 250 and with the provisions of the SFA's processing agreements in the procurement of process end products on behalf of the District and will ensure crediting of the SFA for the value of donated foods contained in such end products at the processing agreement value.

12.3.2 In accordance with 7 CFR 250.51 (a) and (b), Whitsons will credit the SFA for the value of all donated foods received for use in the SFA's meal service in the school year, on at least an annual basis, through invoice reductions, refunds, discounts, or other means. Such requirement includes crediting for the value of donated foods contained in processed end products if Whitsons, in accordance with its contract, procures such end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in such end products on to the SFA. All forms of crediting must include clear documentation of the value received from the donated foods. In cost-reimbursable situations, Whitsons procurement of processed end products is restricted to those processors that have signed processing agreements with the State distributing agency of the SFA in accordance with 7 CFR Part 250.

12.3.3 In accordance with 7 CFR 250.51(c) Whitsons must use the donated food values determined by the distributing agency in accordance with 7 CFR 250.58(e), or, if approved by the distributing agency, donated food values determined by an alternate means of the SFA's choosing. The method of determining the donated food values must be included in procurement documents and in the contract, and must result in the determination of actual values. Negotiation of such values is not permitted.

12.3.4 In accordance with 7CFR 250.51(d), Whitsons must use all donated ground beef, donated ground pork, and all processed end products, in the SFA's food service and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service.

12.3.5 Whitsons must meet the general requirements for the storage and inventory management of donated foods in 7 CFR 250.14(b). In accordance with 7 CFR 250.52(a), the FSMC may store and inventory donated foods together with food it has purchased commercially for the SFA's use. It may store and inventory such foods together with other commercially

purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7 CFR 250.51(d). Additionally, under cost-reimbursable contracts, Whitsons must ensure that its system of inventory management does not result in the SFA being charged for donated foods.

12.3.6 The SFA and Whitsons must maintain records of receipt of donated foods and processed end products, or crediting for the value of donated foods, and other records relating to donated foods, in accordance with 7 CFR 250.54. The SFA must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that Whitsons has credited it for the value of all donated foods received for use in the SFA's food service in the school year including, in accordance with requirements in 7 CFR 250.51(a), the value of donated foods contained in processed end products. Whitsons must return all unused donated ground beef, donated ground pork, processed end products and (at the SFA's discretion) return all other unused donated foods in accordance with 7 CFR 250.52(c) when a contract terminates, is not extended or renewed.

12.4 Title to Donated Food. Title to USDA-donated food shall remain in the SFA.

SECTION 13. INSURANCE & INDEMNITY

13.1 FSMC shall indemnify and hold harmless SFA or any employee, officer, director, or agent of the SFA, from and against all claims, damages, losses, and expenses (including without limitation reasonable attorneys' fees incurred to defend litigation), decrees or judgments whatsoever arising from any and all injuries, including death or damages or destruction of property, resulting to any third person or persons, corporation, partnerships or associations to the extent caused by any negligent act or omission of the FSMC and/or its agents, servants or employees in performance of its obligations under the terms of this Agreement or otherwise. The FSMC shall be required to indemnify or hold harmless the SFA from any liability or damages arising from the negligent acts of the FSMC. The foregoing provisions concerning contribution and indemnification shall not apply to the FSMC's or SFA's liability under applicable worker's compensation laws. Nor shall the foregoing be deemed a waiver of any defenses to which the FSMC or the SFA may be entitled under applicable worker's compensation laws.

13.2 Notification of an event giving rise to an indemnification claim ("**Notice**") must be given to the FSMC promptly following receipt of such claim or following the discovery by the SFA that the FSMC actions or omission may have precipitated the claim. The SFA shall include a brief factual summary of the damage and cause thereof. An indemnification claim is expressly subject to and conditioned upon compliance with the Notice provisions hereunder; provided that the provision of a late Notice to the FSMC will not relieve the FSMC from any obligation and liability which it may have to the SFA under this Section 13, unless such delay materially prejudices the ability of the FSMC to defend against such action or claim.

13.3 Whitsons shall maintain in force at all times during which services are to be performed hereunder the following insurance coverage placed with reputable company(ies) licensed by the Commonwealth of Massachusetts: Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance (including fire liability) in the combined single limit of not less than Three Million Dollars (\$3,000,000.00), including, but not limited to, Personal Injury, Liability, Broad Form Property Damage Liability blanket Contractual Liability and Products Liability, covering only the operations and activities of Whitsons under the Agreement, and shall provide SFA with a certificate evidencing such policies. The limits stated herein can be satisfied through a combination of primary and excess policies.

In addition Whitsons shall maintain the following:

Automobile Liability	Liability Limit \$1,000,000
Workers' Compensation:	Statutory Limits
Employers Liability:	\$1,000,000 each accident
	\$1,000,000 disease policy
	\$1,000,000 disease accident limit

13.4 Certificates of insurance for such coverage naming the SFA as an additional insured will be furnished within 30 days of signature of this Agreement (and in any event prior to commencing operations hereunder) and on each renewal hereof, and Whitsons shall provide replacement/renewal certificate at least 30 days prior to the expiration of the policy. Should any of the described policies be cancelled before the expiration date, written notice must be made to the SFA 30 days prior to cancellation.

13.5 The SFA shall obtain and maintain insurance for the Facility, service equipment, offices and utilities against risks covered by standard forms of fire, theft and extended coverage in such amounts under such policies as appropriate. Each Party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other Party hereto and its subsidiaries and affiliates for loss or damage to such Party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard broad form property insurance policies.

13.6 Limitation of Liability. Notwithstanding anything herein contained to the contrary, neither Party shall be liable to the other or to any third party for any lost profits or indirect, punitive, special or consequential losses or damages arising out of or in connection with this Agreement.

13.7 Performance Bond. The FSMC shall furnish a performance bond for each year of the Agreement. The amount of the bond shall be equal to 10% of the yearly amount of the Agreement. The bond must be from a surety company listed in the most recent U.S. Department of the Treasury Circular 570. The performance bond for the Initial Term must be presented within thirty (30) days of the execution of the Agreement. The performance bond for each Renewal Term (if the Agreement is extended) must be presented within thirty (30) days of the beginning of each Renewal Term.

13.8 The provisions of this Sections 13.1 through 13.6 shall survive any termination of this Agreement.

SECTION 14. SFA RESPONSIBILITIES

In addition to obligations set forth elsewhere in this Agreement or by law, the SFA shall be responsible for the following:

14.1 Food Service Conformity. The SFA shall remain responsible for ensuring that the food service operation is in conformance with its agreement under the program and shall monitor the food service operation through periodic on-site visitations. [7 CFR 210.16(a)(2)&(3)]

14.2 Advisory Board. The SFA shall establish an Advisory Board composed of parents, teachers and students to assist in menu planning. [7 CFR 210.16(a)(8)]

14.3 Health Certification. The SFA shall maintain applicable Board of Health certification and permits for its Facility, and ensure that all state and local regulations are being met by Whitsons in preparing or serving meals at the Facility. [7 CFR 210.16(a)(7)]

14.4 Control of Food Service Program; Pricing. The SFA shall retain control of the quality, extent and general nature of its Food Service Program, including without limitation (i) control of the food service account and financial overall responsibility for the Food Service Program, and (ii) control for the establishment of all prices, including price adjustments, for meals served under the Food Service Program, e.g. pricing for reimbursable meals, a la carte service, vending machines, and adult meals.

14.4.1 Food Specifications. The SFA shall provide detailed specifications including, but not limited to, grade and weight for each food component or menu item as specified in by the USDA and include these specifications in all IFBs or RFPs. Specifications may also cover other items such as purchase units, style, condition, ingredients, formulations and delivery time. Such specifications shall be incorporated into this Agreement. [7 CFR 210.16(c)(3)] The SFA expects that the FSMC can and will provide suggestions and recommendations to help improve nutrition and achieve cost efficiencies.

14.4.2 Non-Payment By SFA. No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component specified in the School Lunch Pattern or do not otherwise meet the requirements of the Agreement; provided, however, that no deduction shall be made unless SFA shall have given Whitsons written notification within two (2) business days of the meal service for which the deduction is to be made, specifying the number of meals for which the SFA intends to deduct payment and setting forth the reasons for the deduction. [7 CFR 210.16c(3)]

14.5 Menu Cycle. The SFA shall develop and include in the invitation to bid or request for proposal a 21-day cycle menu. Whitsons must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the SFA. [7 CFR 210.16(b)(1)]

14.6 Signature Authority. The SFA shall retain signature authority on the application/agreement to participate in the National School Lunch Program (NSLP), School Breakfast Program (SBP) and the Special Milk Program (SMP), including the SFA's free and reduced price policy statement, the monthly claims for reimbursement, and Commodity Order forms. [7 CFR 210.16(a)(5)]

14.7 Internal Controls. The SFA shall establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim of Reimbursement. At a minimum, the SFA shall: (i) review worksheets and make comparisons of daily free, reduced price, and paid lunch counts against data which will assist in the identification of lunch counts in excess of the number of free, reduced price and paid lunches served each day to children eligible for such lunches; (ii) develop and implement a system for follow-up on those lunch counts which suggest the likelihood of lunch counting problems; and (iii) conduct an on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the SFA. [7 CFR 210.8(a)]

14.8 Reimbursement Claims. The SFA shall be responsible for signing reimbursement claims. This responsibility cannot be delegated to Whitsons. [7 CFR 210.16(a)(5)]

14.9 Contractual Responsibility. The SFA shall be responsible for all contractual agreements entered into in connection with the school nutrition program (e.g., vending meals to other SFA food

authorities). [7 CFR 210.19(a)(1)]

14.10 Financial Responsibility. The SFA shall retain control of the school food service account and overall financial responsibility for the School Nutrition Programs. The SFA shall be solely responsible for preparing and submitting all certification worksheets, statements, claims and other documentation required in connection with the USDA six-cents reimbursement certification and validation process. [7 CFR 210.19(a)(1)]

14.11 Program Review. The SFA shall be responsible for ensuring resolution of program review and audit findings. [7 CFR 210.9(b)(17) and 210.18(k)(1)(2)]

14.12 Parent Letters. The SFA shall develop, distribute, and collect the parent letters and applications for free and reduced price meals and free milk. [7 CFR 245.6]

14.13 Verifying Free & Reduced Meal Applications. The SFA shall be responsible for determining and verifying applications for free and reduced price meals or free milk benefits and the conduct of any hearings related to such determinations. This responsibility shall not be delegated to Whitsons. [7 CFR 245.6]

14.14 USDA-Donated Food. The SFA shall assure that the maximum amount of USDA-donated foods are received and utilized by Whitsons. [7 CFR 210.9(b)(15)]

14.15 Commodity Processing Contracts. The SFA shall establish commodity processing contracts. This responsibility cannot be delegated to Whitsons. [7 CFR 250.12(f)]

14.16 Losses. The SFA shall be responsible for any losses (including to USDA donated commodities) which may arise due to circumstances beyond the control of Whitsons, including but not limited to loss of electrical power, flooding or equipment malfunction.

14.17 Inventory. The SFA will provide a physical inventory of supplies and equipment available for use by Whitsons prior to the commencement of this Agreement.

14.18 Equipment Damage. The SFA shall be responsible for loss or damage (including repair and maintenance) not caused by Whitsons to equipment owned or leased by the SFA and located on its premises.

14.19 Equipment Installation. The SFA shall furnish, install and maintain any equipment or make any structural changes needed to comply with federal, state and local laws.

14.20 Fixture Repairs. The SFA shall be financially responsible for repairs to, and replacement of, all permanent fixtures such as faucets, lights, sewers, air conditioning, heating vents, hoods and all other electrical work to the extent that such repairs are not necessitated by the willful or negligent act or omission by Whitsons and/or its employee(s).

14.21 Utilities. The SFA shall furnish at its expense, space, light, heat, power, hot and cold water, local telephone service, and other utilities (including high-speed internet and WiFi service) as are necessary for the operation of the Food Service Program hereunder, as specified in the RFP, Exhibit G, Division of Costs for the Food Service Program.

14.22 Food Service Areas and Office. The SFA shall make available without cost to Whitsons areas of the Facility agreeable to both Parties in which Whitsons shall render its services, such areas being reasonably necessary for providing efficient food service. In particular, but not in limitation of the foregoing, the SFA shall provide, without charge to Whitsons, office space for use by Whitsons' Food Service Director and other managers in the performance of this Agreement. Whitsons shall take reasonable and proper care of the office space and shall return it to the SFA at the termination of the Agreement in the condition in which it was received, ordinary wear and tear excepted. All records which the FSMC is required to maintain under this Agreement shall be stored in said office.

14.23 Access. The SFA shall have unlimited access to all areas used by Whitsons for purposes of inspections and audits.

14.24 Toilet Facilities. The SFA shall make available sanitary and adequate toilet and hand-washing facilities for the employees of Whitsons and SFA employees working in the Food Service Program. All such facilities shall be ADA compliant.

SECTION 15. HEALTH CERTIFICATION

15.1 Health Certification. Whitsons shall have state or local health certification for any facility outside the SFA Facility in which it proposes to prepare meals, and Whitsons shall maintain all such required health certifications for the duration of the Agreement. [7 CFR 210.16c(2)]

15.2 Safety Regulations. SFA shall obtain and post all applicable health permits for the SFA's Facilities. Whitsons shall comply with all health and safety regulations required by federal, state or local law in preparing and serving meals at the Facility. [7 CFR 210.6(a)(7); 7 CFR 210.16c(2)]

SECTION 16. COMPLIANCE WITH LAW

16.1 Whitsons shall comply with all applicable laws, ordinances, rules and regulations relating to the Food Service Program and sanitation, safety and health, including, without limitation, the following: (i) National School Lunch Program (in particular Title 7, Code of Federal Regulations, Parts 210, 215, 245, and 250 et seq.), the Child Nutrition Act, as amended (7 CFR Part 220), all FNS instructions and policy governing the Food Service Program, Section 103 of the Federal Contract Work Hours and Safety Standards Act (addressing overtime and compensation), Section 306 of the Clean Air Act (42 USCA Section 1857(h)), Section 208 of the Clean Water Act (33 USCA Section 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15); (ii) Whitsons shall recognize mandatory standards and policies relating to energy efficiency and shall comply with the Energy Conservation Policy and Conservation Act (P.L. 94-163); (iii) Violations shall be reported to the U.S. Department of Agriculture, Food and Nutrition Services, and the EPA. Whitsons shall not knowingly utilize a facility listed on the EPA List of Violating Facilities; (iv) Whitsons shall procure and maintain all necessary licenses and permits. [7 CFR 3016.36(i)]

16.2 Whitsons shall not participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue code 1986, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

16.3 The SFA and FSMC shall not employ any persons to perform services in the Food Service Program who do not meet health requirements under the Massachusetts 1999 Food Code, 105 CMR

590.000. Food service employees shall conform to employee health and hygiene requirements in 105 CMR 590.000.

16.4 Each Party shall comply with the laws, ordinances, rules and regulations of all applicable Federal, State, county and city governments, bureaus and departments concerning the sanitation, safety and health of the food service operations, and the implementing regulations of the USDA issued thereunder and any additions or amendments thereto.

SECTION 17. DEBARMENT/ SUSPENSION CERTIFICATE

17.1 Debarment/Suspension Certificate. Whitsons shall sign a Debarment/Suspension Certification. This certification assures the SFA that Whitsons has not been debarred from entering into contracts with the federal government, with the Commonwealth of Massachusetts, or any entity receiving federal funds or suspended from entering contracts during a time when Whitsons is being investigated for a legal action taken to debar Whitsons from contracting activities. [7 CFR 3017.510]

17.2 Location of Certificate. The certification is attached to the signed Agreement and kept on file at the SFA. A copy of the certification will be forwarded to the state agency with a copy of the signed Agreement. [7 CFR 3017.510]

SECTION 18. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

18.1 Independent Price Certification. Whitsons shall certify that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition. [7 CFR 3017]

18.2 Certificate of Independent Price Determination. Whitsons and the SFA shall sign and submit a Certification of Independent Price Determination with the Agreement. Whitsons shall attach the certification to the signed Agreement and the certification shall be kept on file at the SFA. SFA shall also forward a copy of the certification to the state agency with a copy of the signed Agreement. [7 CFR 3017]

SECTION 19. LOBBYING ACTIVITIES/ OTHER CERTIFICATIONS

19.1 Lobbying Certification. Whitsons will sign and submit a certification regarding lobbying which conforms in substance with and all applicable state laws. [7 CFR 3018]

19.2 Location of Certification. The certification regarding lobbying shall be attached to the signed Agreement and kept on file at the SFA. A copy of any certification shall also be forwarded to the state agency with the signed Agreement. [7 CFR 3018]

19.3 Disclosure of Lobbying Activities. Whitsons shall disclose lobbying activities in connection with school nutrition programs. [7 CFR 3018]

19.4 Other Certifications.

(a) Pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, Whitsons hereby certifies under the penalties of perjury that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors,

and withholding and remitting child support.

- (b) Whitsons shall comply with M.G.L. c. 268A, the Commonwealth's Conflict of Interest Law.
- (c) Whitsons hereby certifies under penalties of perjury that its Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- (d) Whitsons certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.
- (e) Whitsons certifies that, to the best of its knowledge, no consultant to or subcontractor for Whitsons has given, offered or agreed to give any gift, contribution or offer of employment to the SFA, or to any other person, corporation, or entity as an inducement for, or in connection with, the award of this Agreement.
- (f) Whitsons certifies that no person, corporation or other entity, other than a bona fide full time employee, has been retained or hired by Whitsons to solicit for or in any way assist it in obtaining this Agreement contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to Whitsons.
- (g) By executing this Agreement, the SFA represents and warrants to Whitsons that it has complied with the requirements of 7 CFR 210.16(a)(9) and (10) and has obtained the requisite approvals of the Massachusetts Department of Elementary and Secondary Education ("DESE").

SECTION 20. GENERAL TERMS & CONDITIONS

20.1 Governing Law. This Agreement, its construction, validity, effect, performance and enforcement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.

20.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the operation of the Food Service Program and supersedes all prior or contemporaneous negotiations, discussions or understanding regarding such subject matter. There are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the Parties relating to the matters covered by this Agreement other than those set forth in this Agreement.

20.3 Severability. Each article, paragraph, subparagraph, term and condition of this Agreement, and any portions thereof, will be considered severable. If, for any reason, any portion of this Agreement is determined to be invalid, contrary to or in conflict with any applicable present or future law, rule or regulation in a final ruling issued by any court, agency or tribunal with valid jurisdiction, that ruling will not impair the operation of or have any other effect upon, any other portions of this Agreement; all of which will remain binding on the parties and continue to be given full force and effect.

20.4 Assignment. Neither Whitsons nor the SFA may assign or transfer this Agreement, or any part thereof, without the written consent of the other Party, except the parties may assign this Agreement

to an affiliated company or wholly owned subsidiary without prior approval and without being released from any of their responsibilities hereunder.

20.5 Captions. All captions in this Agreement are intended solely for the convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this Agreement.

20.6 Construction and Effect. No failure of either party to exercise any power reserved to it by this Agreement or to insist upon strict compliance by the other Party with any obligation or condition hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with any of the terms of this contract. Waiver by either Party of any particular default shall not affect or impair either Party's right to exercise any or all of its rights and powers herein, nor shall that constitute a waiver by that Party of any right hereunder, or of its right upon any subsequent breach or default to terminate this Agreement prior to the expiration of its terms.

20.7 Proprietary Materials. SFA acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to Whitsons or its affiliated and parent companies (collectively "**Marks**") are proprietary Marks of Whitsons, and SFA will not use the Marks for any purpose except as expressly permitted in writing by Whitsons. Upon termination of this Agreement, SFA shall (a) immediately and permanently discontinue the use and display of any Marks, (b) allow Whitsons to make or cause to be made changes to the Premises as reasonably necessary to effectively distinguish the Premises from any trade dress owned by Whitsons (collectively "**De-Image**"), and (c) allow Whitsons to immediately remove all goods and materials bearing any Marks. The SFA shall give Whitsons or its agents reasonable access to the Premises in order to De-Image the Premises as aforesaid. If Whitsons shall fail to De-Image the Premises within 30 days of the termination date (other than due to the SFA's fault or failure to provide access), the SFA and its agents shall have the right but not the obligation to De-Image the Premises and discard any materials bearing the Marks without any liability. The provisions of this Section 20.7 shall survive any termination of this Agreement.

20.8 Notices. If any notice or other correspondence is required to be delivered under this Agreement, it shall be given in writing, and shall be delivered personally, by electronic mail (confirmed by first class mail), by overnight delivery service, or by United States registered or certified mail, postage prepaid with return receipt requested, in which event it shall be deemed given upon receipt, to the parties at the following addresses (or to such other address as a party may designate by notice).

To SFA: Public Schools of Brookline
 ATTN: Mr. Matthew J. Gillis, Director of Operations
 194 Boylston Street
 Brookline, MA 02445
 Email: matt_gillis@psbma.org

To Whitsons: Whitsons New England, Inc.
 ATTN: Ms. Kelly A. Friend, COO, Contract Management
 1800 Motor Parkway
 Islandia, NY 11749

 Email: friendk@whitsons.com

With a courtesy copy to the same address, attention: SVP, Administration and General Counsel, legal@whitsons.com

20.9 Confidentiality. In the course of providing the services hereunder, the Parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other Party including, but not limited to, menus, recipes, signage, Food Service Program surveys and studies, management guidelines, procedures, operating manuals and software, all of which shall be identified as confidential ("**Confidential Information**"). The Parties agree to hold in confidence and not to disclose any Confidential Information during the Term of this Agreement and at all times thereafter, except that the Parties may use or disclose Confidential Information: (a) to its employees and affiliates or others to the extent necessary to render any Food Service hereunder, provided that the other Party is first notified of the information that will be provided to any party outside of this Agreement and provided further that such information is disclosed only after such outside party is required and agrees to maintain it in confidence as required hereunder; (b) to the extent expressly authorized by either Party in writing; (c) to the extent that at the time of disclosure, such Confidential Information is generally available or known to the public, or after disclosure hereunder becomes generally available or known to the public other than by breach of the terms of this Agreement; (d) that is in the possession of either Party at the time of disclosure and is not acquired directly or indirectly from the other Party; (e) that is subsequently received on a non-confidential basis from a third party having a right to provide such information; or (f) as required by law or court order during the course of a judicial or regulatory proceeding or as required by a government authority. The Parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other Party. Each Party's Confidential Information shall remain the exclusive property of the Party and shall be returned to the other Party upon termination or expiration of this Agreement, or at any time upon request. This section (and the rights and obligations of the Parties hereunder) is subject to the Massachusetts Public Records Law, and the SFA's good faith efforts (with advice of counsel) to comply with such law shall not constitute a breach of this provision of the Agreement. Subject to the preceding sentence, SFA shall endeavor in good faith to inform FSMC of any written public records requests under this law that include a request of Confidential Information, so that it may assert any applicable exemptions or exclusions. The provisions of this Section 20.9 shall survive any termination of this Agreement.

20.10 IT Security. In connection with the services being provided hereunder, FSMC may need to operate certain information technology systems not owned by SFA ("**Non-Client Systems**"), which may need to interface with or connect to SFA's networks or information technology systems ("**SFA Systems**"). FSMC shall be responsible for all Non-SFA Systems, and SFA shall be solely responsible for SFA Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If FSMC serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then FSMC will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data ("**Data Protection Rules**"). If Non-SFA Systems interface with or connect to SFA Systems, then SFA agrees to implement forthwith upon request from FSMC, at its own expense, the changes to the SFA Systems that FSMC reasonably requests and believes are necessary or prudent to ensure FSMC compliance with the Data Protection Rules. FSMC shall indemnify, defend and hold harmless the SFA from all claims, liabilities, damages and costs (including reasonable lawyer's fees) to the extent caused by the FSMC's failure to comply with its obligations in this section.

20.11 Remedies. In the event of any breach of this Agreement, the Parties shall be entitled to equitable relief in addition to all other remedies otherwise available to it at law. This provision shall survive the termination or expiration of this Agreement.

20.12 Amendments to the Agreement. The Parties cannot alter any provision in this Agreement that is required by any law, rule or regulation. The Parties cannot otherwise amend or alter this Agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the Agreement. The Parties must mutually agree, in a written document signed by both parties and attached to this Agreement, to amend, add, or delete any Section, Exhibit or Appendix. Any amendment to this Agreement shall become effective at the time specified in the amendment.

20.13 Counterparts. This Agreement may be executed in one or more counterparts. Each such executed counterpart and facsimile or electronic signature shall be deemed to be an original, but all of which taken together shall constitute a single instrument.

20.14 Appropriation of Funds. SFA represents and warrants that it has received sufficient funding and allocation of funds to perform its obligations under this Agreement for the duration of the Initial Term. The SFA's financial commitments contained in this Agreement for each Renewal Term are subject to annual appropriation by the SFA's School Board. SFA will pay all amounts hereunder that have accrued up to and including the effective date of any termination of this Agreement for all services provided hereunder, regardless of lack of funds or insufficient funds being appropriated to or budgeted by or for SFA for payment under this Agreement, unless the SFA notifies Whitsons that it is contesting the payments in a legal proceeding.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument as of the respective dates written below.

PUBLIC SCHOOLS OF BROOKLINE

WHITSONS NEW ENGLAND, INC.

By: _____

By: M. L. H. [Signature]

Title: _____

Title: President + CEO

Date: _____

Date: 10/17/17