

AGREEMENT TO PROVIDE MEALS FOR LIMITED DURATION DURING DISASTER

This Agreement to Provide Meals for Limited Duration During Disaster (“**Agreement**” or “**Contract**”) dated August 1, 2021 is made by and between Ocean Charter School, located at 12870 Panama Street, Los Angeles, CA 90066 (“**Partner**”) and the Vendor (“**Vendor**” or “**Revolution Foods**”), located at 16932 Valley View Avenue, La Mirada, CA 90638. Partner and Vendor may be individually referred to herein as a “**Party**” or collectively referred to as the “**Parties**.”

A. Services. Vendor shall furnish to Partner the services, as fully described in the attached Exhibit "A" and incorporated into this Agreement by reference (“**Services**” or “**Statement of Work**”).

B. Term and Termination

1. This Agreement will begin on August 18, 2021 and will end June 30, 2022 (“**Term**”), and may be extended upon mutual agreement of the Parties in accordance with State and Federal regulations governing the provision of school meals during disasters.
2. Either Party may terminate this Agreement for default:
 - a. The non-breaching Party shall give the breaching Party written notice specifying the default, and the breaching Party shall have five (5) business days within which to cure the default. If the default is not cured within that time, the non-breaching Party shall have the right to immediately terminate this Agreement.
 - b. Immediately upon written notice if the Party becomes insolvent or the subject of any other proceeding, receivership, liquidation or assignment for the benefit of creditors.
3. Either Party may terminate this Agreement for convenience by giving fourteen (14) business days written notification to the other Party, setting forth the reason and the effective date of termination.
4. Partner shall pay Vendor for Services provided through the effective termination date and all outstanding balances, not in dispute, within fifteen (15) business days of the Termination Date.

C. Payment Terms

Vendor shall issue itemized electronic invoices by the tenth (10th) calendar day of each month for Services provided during the previous month. Partner shall submit payment in such form as reasonably requested by Vendor within thirty (30) days of receipt of Vendor’s invoice. Vendor reserves the right to levy a seven percent (7%) interest rate (compounded monthly) or the maximum interest rate permitted by law, whichever is lower, on any and all balance(s) not in dispute and left unpaid on any invoice. For avoidance of doubt, failure to pay any invoice amount due is considered a material breach of this Agreement.

Partner shall provide written notice of invoice disputes no later than five (5) calendar days of receipt of Vendor’s invoice. Partner’s failure to give notice of any invoice dispute within the stated timeframe shall constitute an unqualified waiver of all disputes or claims for the period the invoice covers.

No payment shall be made for meals affected by delivery or fulfillment errors if such delivery or fulfillment error affects Partner’s claim for reimbursement, provided that Partner provides detailed written notice of spoiled or delivery or fulfillment errors no later than twenty-four (24) hours after the delivery. Partner shall preserve evidence of meals for inspection by Vendor. Partner’s failure to preserve evidence and/or give written notice of any delivery or fulfillment error within the stated timeframe shall constitute an unqualified waiver of all errors or claims for that period.

D. Compliance with Laws

1. Vendor shall maintain state and local health certifications for the facility where meals are prepared for the Term.

2. Partner will comply with all applicable Federal, State and local statutes and regulations with regard to the consumption of Meals. Partner shall maintain all appropriate state and local health certifications for each Site Vendor provides Services for the Term.
3. Partner shall maintain responsibility for claiming reimbursement from the appropriate State agency for all meals served to participants enrolled in Child Nutrition Program(s) and fulfilling all agency or government requirements to receive reimbursement or other assistance, including as required during the COVID-19 emergency.
4. Vendor represents that it shall endeavor to provide reimbursable meals in compliance with applicable USDA Child Nutrition Program meal pattern guidelines, including the Buy American Provision; provided however, that in the event there is a disruption to the food supply as a result of the COVID-19 emergency and/or the Secretary of Agriculture issues a waiver to any applicable Child Nutrition Program meal pattern requirements, the Parties shall confer to identify mutually agreeable substitutions for affected meal components and/or meal pattern requirements.

E. Menu Planning

1. Within one (1) week of this Agreement's commencement, Vendor shall provide a monthly menu, and related nutritionals with carbohydrate and allergen reports.
2. Unforeseen circumstances may require that the Vendor make menu changes or provide substitutions in the Vendor's discretion and without notice to Partner. In the event Vendor determine such change or substitution is required, Vendor shall use their best efforts communicate the change in writing to Partner.
3. Partner shall provide all meals for people with special dietary needs other than those specifically provided for in this Agreement, and keep on file a signed statement by a medical doctor or a recognized medical authority for all people with special dietary needs as required by law or regulation.

F. Force Majeure

1. Neither Party shall be liable to the other for any unforeseeable interruption, delay, or failure to perform any covenant or promise contained in this Agreement caused directly by acts of God, network failures, acts of civil or military authorities, government orders, war, civil disturbances, energy crises, transportation contingencies, interruptions in third-party telecommunications, epidemics, pandemics, quarantines, or other catastrophes or occurrences which are reasonably beyond such Party's control; provided that any such delay or failure shall be remedied by such Party using commercially reasonable efforts as soon as possible after removal of the cause of such delay or failure. Disruptions to the supply chain that prevent performance by Vendor will be considered a force majeure event.
2. The Parties shall use reasonable care to protect against the effects of force majeure, and the Party seeking relief under this provision shall promptly notify the other Party in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by force majeure have been removed.
3. Interruption, delay, or failure to perform any covenant or promise contained in this Agreement caused directly by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. Neither Party shall recover any claim for damages from the other if that claim for damages is caused directly by force majeure.

G. Records and Audit

1. Partner shall administer and manage all aspects of the application process for free and reduced-price meals under the applicable Child Nutrition Program for all program participants.
2. Partner is responsible for all point of service meal counts and completion of all documents required by the applicable Child Nutrition Program, including making claims for reimbursements.

3. Vendor shall, in the event of an audit or administrative review of Partner's participation in a Child Nutrition Program for which the Vendor has provided meals, provide audit/administrative review document requisition support to Partner, provided that Partner notifies Vendor of the full and complete scope of the audit or administrative review within three (3) business days of receiving notice of the administrative review or audit.
4. Vendor shall retain all records pertaining to the nutritional components and quantities of meals provided to Partner during the Term ("**Records**") for a period of three (3) years after the date of final payment made for Services provided under this Agreement ("**Retention Period**"). Partner may, upon written request and no later than sixty (60) days prior to the end of the Retention Period request that Vendor retain Records for a reasonable time beyond the Retention Period. Vendor shall make Records available for inspection by Partner and State and Federal authorities upon written request.

H. Notices

All notices or reports permitted or required under this Agreement will be in writing and will be sent by email or personal delivery or reputable expedited delivery service with signature required. All such notices or reports will be deemed given upon receipt. Such notices shall be addressed to the Party concerned at the addresses set forth below.

Notices to Partner shall be sent to:

Ocean Charter School
12870 Panama Street, Los Angeles, CA 90066
ATTENTION: Taciana Borges

Notices to Vendor shall be sent to:

Revolution Foods
Att: REGIONAL PARTNERSHIP MANAGER
16932 Valley View Avenue, La Mirada, CA 90638
(Copy to: Legal Department, 985 3rd Street, Unit C, Oakland, CA 94607)

I. Confidentiality and Rights In Data

During the Term, Vendor may grant to Partner a nonexclusive right to access Vendor's confidential information ("**Confidential Information**"). As used in this Agreement, Vendor's Confidential Information shall mean any and all technical and non-technical information disclosed or provided to Partner by or on behalf of Vendor in written, oral or electronic form in connection with this Agreement. Confidential Information will include, without limitation: trade secrets as defined by law, strategic and product development plans, sales and training methods, financial statements, Service details,, project records, employee lists or compensation information, marketing plans, existing and/or contemplated recipes/menus/food development strategies or plans, management and business manuals, handbooks, forms, policies and procedures, ideas, and/or studies not generally made available to the public. Without limiting the foregoing and except for software provided by Partner, Partner specifically agrees that all software used by Vendor to provide Services, including without limitation, menu systems, accounting systems, and other software, are owned by or licensed to Vendor and not to Partner. Furthermore, Partner's access to or use of such software shall not create any right, title interest, or copyright in such software and Partner shall not retain such software beyond the termination of the Agreement. Any discovery, invention, software, or programs paid for by Partner shall be the property of Partner.

Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to Vendor's disclosure; (ii) becomes publicly known and made generally available after Vendor's disclosure through no action or inaction of Partner; (iii) is already in Partner's possession at the time of Vendor's disclosure as shown by Partner's files and records immediately prior to Vendor's disclosure.

Partner shall not use the Confidential Information for any purpose other than performing this Agreement. Partner shall hold the Confidential Information in strict confidence, and shall take all reasonable precautions to protect the Confidential Information at all times from unauthorized disclosure, publication, or use, including, without limitation, using at least the same degree of care

as it employs to protect its own Confidential Information of like nature (but in any event no less than a reasonable degree of care), acting in a manner consistent with Partner's obligations under this Agreement.

Unless otherwise required by law, subpoena or court order, Partner shall not disclose any of Vendor's Confidential Information, directly or indirectly, until such Confidential Information becomes publicly known and made generally available through no action or inaction of Partner. Unless otherwise required by law, subpoena or court order, Partner shall not photocopy or otherwise duplicate any Confidential Information without Vendor's prior written consent. Partner shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods to those of Vendor. Partner agrees to notify Vendor immediately in writing as soon as is practicable, upon any loss, misuse, misappropriation, or other unauthorized disclosure of the Confidential Information that comes to Partner's attention.

This provision shall survive termination of this Agreement. All Confidential Information shall remain the Vendor's exclusive property and Partner shall return all Confidential Information to Vendor upon termination of this Agreement. In the event of any breach of this provision, Vendor shall be entitled to all remedies, including an injunction or specific performance available at law or in equity.

J. Indemnity and Limitation of Liability

1. **Partner.** Partner shall defend, indemnify and hold harmless Vendor, its directors, officers, employees, suppliers, successors, and assigns from and against all liabilities, losses, damages, expenses, charges and fees (including reasonable attorney's fees) sustained or incurred by Vendor in connection with third-party claims arising out of or attributable to: (i) any breach of this Agreement by Partner; (ii) any breach of applicable law or regulation by Partner or Partner Workers; (iii) any negligence or willful misconduct by Partner or any of Partner Workers, in the performance of this Agreement; or (iv) any allegations that Services and/or Work Product infringes any third-party's intellectual property right, including without limitation, a copyright, patent or a trademark.
 2. **Vendor.** Vendor shall defend, indemnify and hold harmless Partner, its directors, officers, employees, suppliers, successors, and assigns from and against all liabilities, losses, damages, expenses, charges and fees (including reasonable attorney's fees) sustained or incurred by Partner in connection with third-party claims arising out of or attributable to: (i) any breach of this Agreement by Vendor; (ii) any breach of applicable law or regulation by Vendor, or (iii) any negligence or willful misconduct by Vendor or its employees or contractors, as applicable, in the performance of this Agreement.
 3. Excluding each Party's obligations above, if any Party incurs indemnification obligations under this section; or any expenses, damages, or other liabilities in connection with this Agreement, such Party's liability to the other Party shall not exceed the payments actually paid to the Vendor over the previous twelve (12) months. In no event will any Party be liable for any special, incidental, consequential, indirect damages arising in any way out of this Agreement, however caused and on any theory of liability.
- K. **Insurance.** The Parties to this Agreement will each maintain commercial general liability insurance for one million dollars (\$1,000,000) or more for each occurrence and two million dollars (\$2,000,000) or more in the aggregate. Coverage shall not be canceled or modified without providing thirty (30) days prior written notice to the other. Each Party shall provide the other with an insurance certificate naming the other as additional insured under this policy within thirty (30) days of the date of this Agreement.
- L. **Severability.** If any provision of this Agreement should be held invalid or unenforceable, then that provision only shall be modified to the extent necessary to make such provision valid and enforceable. All other provisions shall be unaffected and shall remain in full force and effect, to the extent consistent with the intent of the Parties as evidenced by this Agreement as a whole.
- M. **Survival of Certain Terms.** The provisions of this Agreement which, by their nature should survive, shall survive expiration or termination of this Agreement for any reason.

N. **Waiver.** All waivers must be in writing and signed by the Party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

O. **Entire Agreement; Modification and Amendment**

1. This Agreement constitutes the final, complete and exclusive agreement of the Parties with respect to the matters addressed in it and supersedes all prior and contemporaneous agreements, communications, negotiations or understandings between the Parties with respect to the matters addressed in it.
2. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If changes in Federal or State law, or their implementing regulations require any provision(s) of this Agreement to be modified, such modification shall automatically be incorporated into and made part of this Agreement on the effective date of such required change.
3. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties.
4. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

P. **Cooperation of the Parties.** The Parties acknowledge that fulfilment of the terms of this Agreement may be frustrated or prevented by circumstances outside the Parties' control. The Parties agree to cooperate fully, work in good faith, and mutually assist each other in the performance of this Agreement, and shall work to resolve problems associated with this agreement. Neither Party will unreasonably withhold its approval of any act or request of the other to which the Party's approval is necessary or desirable.

Q. **Assignment.** Partner may not assign its rights or obligations under this Agreement without the prior written consent of Vendor. Vendor may transfer or assign this Agreement or any of its rights and obligations, in whole or in part, without Partner's consent, to any third Party with which it merges, or consolidates, or to which it transfers all or substantially all of its assets.

R. **Choice of Law.** This Agreement shall be construed and governed by the laws of the State of California. Any lawsuit relating to this Agreement shall be instituted in a state or federal court in the Northern District of California, and the Parties irrevocably consent and waive all objections to the jurisdiction of any such court.

S. **Section Headings.** Section headings or titles are for convenience only and shall have no substantive effect in the interpretation of this Agreement.

The Parties whose signatures are affixed below are fully authorized to and have executed this Agreement:

Ocean Charter School

Revolution Foods, Inc.

X By: _____

X Name: _____

X Title: _____

X Date: _____

By: _____

Name: ALVIN CRAWFORD

Title: CHIEF REVENUE OFFICER

Date: _____

Attachments: Exhibit A: Scope of Work

Exhibit A: Scope of Work

Governing Agreement. This SOW #1 is effective **August 18, 2021** and constitutes a “**Scope of Work**” under that certain Agreement to Provide Meals for Limited Duration During Disaster by and between Ocean Charter School (“**Partner**”) and Revolution Foods, Inc. (“**Vendor**”), dated August 1, 2021 (the “**Agreement**” or “**Contract**”). This SOW #1 and the Services contemplated include, and are subject to, the terms and conditions of the Agreement, which are incorporated by reference. Should any provision in this SOW conflict with any of the provisions in the Agreement, the Agreement shall control unless such conflicting provision specifically states otherwise.

1. **Scope of Services.** Vendor represents that it shall endeavor to provide reimbursable meals, as specified below (“**Meals**”) in compliance with applicable United States Department of Agriculture (USDA) Child Nutrition Program meal pattern guidelines; provided however, that in the event there is a disruption to the food supply as a result of the COVID-19 emergency and/or the Secretary of Agriculture issues a waiver to any applicable Child Nutrition Program meal pattern requirements, the Parties shall confer to identify mutually agreeable substitutions for affected meal components and/or meal pattern requirements, and determine whether any changes in price or additional costs may apply. Meals are not intended for retail sale.

National School Lunch Program “NSLP”/Seamless Summer Option “SSO”

- Hot and cold breakfast
- Cold, unitized breakfast
- Shelf stable breakfast
- Hot and cold lunch
- Shelf stable lunch (sized for grades 6-8)
- Snack

a. Meal Ordering and Meal Components

- i. The number of meals prepared by Vendor will be determined by the quantity ordered by Partner. Partner shall place orders for Meals, no later than each Tuesday, 5:00pm, for the following week of service. Partner shall place orders using Vendor online ordering system.
- ii. Vendor shall provide:
 1. Lunch entrée and side vegetable packaged in individually portioned trays, fruit in bulk on the side
 2. Fresh white milk for lunch
 3. Nonfat chocolate milk five (5x) per week for lunch only
 4. 1:1 ratio of standard recyclable unitized and napkins to the number of Meals ordered in bulk

b. Delivery and Service of Meals

- i. Vendor will transport Meals from Vendor’s culinary center to one (1) site(s) “**Site(s)**” up to three (3) times weekly. The delivery time will be agreed upon by both Parties.
- ii. Partner agrees to pay \$100.00 per delivery of 149 meals or fewer.
- iii. Vendor shall maintain the proper temperature of the meal components until Partner accepts delivery. Thereafter, Partner will be responsible for maintaining proper temperature and food safety controls until consumed or discarded.
- iv. Partner will provide all personnel necessary to accept delivery, serve, and supervise the consumption of Meals.
- v. **Holidays.** Vendor shall not be responsible for providing Meals on the following holidays. Vendor will notify Partner should holidays change.
 1. Independence Day
 2. Labor Day

3. Thanksgiving Day
4. Any business day on which the following holidays also occur: Christmas Eve, Christmas Day, New Year’s Eve, New Year’s Day
5. Martin Luther King Jr. Day
6. Memorial Day

c. **Pricing and Fees.** Partner shall pay the prices listed below for the Term.

Meal/Item	Delivery Frequency	Est. quantity per Day	Price (each)
Lunch (K-8)	3x weekly	150	\$3.10
Delivery fee	\$100.00 per delivery of 149 meals or fewer		

- i. Pricing is based upon this SOW and, as applicable, federal laws and regulations governing certain commodities. Should this SOW be modified or amended per the Agreement or if such federal laws and regulations materially change, Vendor will adjust pricing to compensate for such changed circumstances. To the extent permitted by law, pricing shall remain confidential between Partner and Vendor.
 - ii. Changes to requirements made by National School Lunch Act or the National School Lunch Program, or other legislation, including legislation related to the COVID-19 emergency, shall result in an appropriate adjustment, including an increase in pricing as dictated by the change in regulations.
 - iii. **New Order Placements and Order Increases after Deadline.** For orders placed or increased after Tuesday, 5:00pm, for the following week of service, Partner shall pay an additional \$50.00 per order, per Site. Partner acknowledges and accepts that all orders placed after the stated deadline are subject to product availability. Vendor may decline to provide meals or suggest an alternative meal if the requested meal is not available without penalty. Partner shall still be obligated to pay for alternative meals delivered to Partner, including such meals that, due to circumstances beyond the Vendor’s control, may not be fully reimbursable.
 - iv. **Order Cancellation or Decrease.** Subject to the Force Majeure provision, Partner shall pay the full applicable meal price for any order cancellations or decreases made later than forty-eight (48) hours prior to delivery.
2. **Subsequent Modifications.** The Parties acknowledge that the terms of this Scope of Work are subject to change during the COVID-19 emergency and may be modified to address changed circumstances. In the event of a change in circumstances, the Parties shall confer on such modifications and additional costs that may apply. If an agreement cannot be reached, either Party may terminate this Agreement upon fourteen (14) business days written notice.
3. **Execution.** This SOW #1 may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

ACCEPTED AND AGREED TO:

Ocean Charter School

Revolution Foods, Inc.

X By: _____
 X Name: _____
 X Title: _____
 X Date: _____

By: _____
 Name: ALVIN CRAWFORD
 Title: CHIEF REVENUE OFFICER
 Date: _____

