AMENDED ATTACHMENT 5

Service Activity Title: The Emergency Food Assistance Program (TEFAP) and Food Purchase Distribution Program (FPDP)

Provider: Hawaii Foodbank, Inc.

PURPOSE OF CONTRACT

This contract outlines the policies and procedures governing the distribution of supplemental USDA Foods under TEFAP to low-income individuals or households whose total gross income is no greater than 185% of the amount specified in the U.S. Federal Poverty Guidelines for the State of Hawaii and residing in the City and County of Honolulu and County of Kauai by supplementing their diets with emergency food and nutrition assistance at no cost.

WORK PROGRAM

The PROVIDER shall provide services in accordance with 7 CFR Part 250, 7 CFR Part 251, other appropriate Federal regulations, the TEFAP Distribution Plan for the State of Hawaii, other appropriate State regulations, and the following provisions:

1. Agreements with ERAs

a. The PROVIDER shall establish and maintain a distribution network of Eligible Recipient Agencies (ERAs) within the geographic area served by the PROVIDER. The PROVIDER shall enter into agreements with ERAs for distribution of TEFAP commodities within geographical subdivisions of the county. All such agreements are subject to oversight by the STATE and may be suspended or terminated by the STATE at any time. The PROVIDER shall maintain a master list of these ERAs. The list shall include the name of the organization, address, contact person, and phone number for each distribution site, and the days and hours of distribution. The ERA list shall be submitted to the STATE as part of the final report.

b. The PROVIDER shall ensure that each ERA as defined by 7 CFR §251.3 shall be a private non-profit or government agency, legally authorized to operate in the State of Hawaii, possess federal tax-exempt status under the IRS, provide food assistance to needy persons on a regular basis for household consumption or prepared meals, and is not a penal institution. In accordance with FNS 118, on an annual basis the PROVIDER shall review the IRS Automatic Revocation of Exemption List to ensure that its ERAs do not appear on the list. The IRS Automatic Revocation Exemption List can be found at http://www.irs.gov/charities/article/0,,id=240099,00.html.
c. Agreements between the PROVIDER and ERAs shall include language to ensure compliance with all TEFAP regulations and compliance with the State Distribution Plan. Until such time the STATE deems it necessary to standardize all agreements between the PROVIDER and their respective ERAs, the agreements executed prior to the period of performance of this contract will remain in effect provided that all modifications of the State Distribution Plan will apply.

d. The PROVIDER shall consider the following factors when selecting ERAs:
   i. Proximity of other ERAs offering similar services;
   ii. Adequacy of the ERA's storage and facility;
   iii. Days and hours of operations;
   iv. Whether the organization has the ability to comply with Federal and State operation/participation standards;
   v. Ability of the ERA to provide food from non-USDA sources; and
   vi. Ability to ensure TEFAP foods are made available to all eligible households.

e. The PROVIDER and the ERA shall sign a new agreement if there is any change in the Executive Director, TEFAP Coordinator, Agency Relations or Financial Management.

f. The PROVIDER shall notify the STATE in writing within 30 days of any suspensions and/or cancellations in TEFAP ERAs, including the reason for the closure and/or cancellation.

g. The PROVIDER shall be notified by the STATE, whenever, in its sole discretion, the STATE deems that good cause exists to suspend an agreement between the PROVIDER and an ERA. The PROVIDER shall immediately suspend all TEFAP operations relating to the agreement in question pending further action by the STATE. Such notice by the STATE shall be deemed to include a thirty (30) day notice of pending termination. The agreement may then be terminated or it may be reinstated on such terms and conditions as the STATE specifies.

h. Should an agreement be terminated for any reason, the PROVIDER or ERA shall transfer its remaining inventory of commodities to another ERA selected by the STATE.

i. The PROVIDER and its ERAs shall maintain a public outreach system that encourages participation and informs potential participants, including minorities, of the availability of USDA foods and hours of operation throughout their service area. The PROVIDER and its ERAs shall publicize their regularly scheduled days and hours of operations, including posting a sign at their distribution site with the information. The distribution of posters, pamphlets, newsletters and public service announcements are recommended forms of public outreach. Word of mouth shall not be used as the sole or primary method of outreach.
2. **Receipt of TEFAP Commodities and Distribution System**

   a. The PROVIDER shall receive TEFAP commodities directly from USDA based on an allocation percentage developed by the STATE consistent with the most current Small Area Income and Poverty Estimates (SAIPE) at the start of the FFY. The PROVIDER shall be notified by email of upcoming orders and may provide input to the STATE on the commodities ordered on a quarterly basis or as bonus commodities become available.

   b. Upon receipt of any commodities, the PROVIDER shall provide documented proof of delivery and notify the STATE of any commodity damages or discrepancies. The PROVIDER will provide the STATE the bills of lading and/or delivery receipts within one (1) day of receiving shipment via email.

   c. The PROVIDER shall distribute commodities to the ERAs within their respective counties, at a minimum on a monthly basis, unless otherwise agreed.

   d. The PROVIDER shall ensure that no ERAs receives commodities in excess of anticipated use, based on inventory records and controls or in excess of its ability to accept and store such commodities.

   e. The PROVIDER and its ERAs shall to the maximum extent practicable, use volunteer workers and food that have been donated, pursuant to 7 CFR §251.10(g).

   f. The PROVIDER shall ensure volunteers shall not consume or receive TEFAP commodities unless they are otherwise eligible to receive donated TEFAP commodities and have completed and signed all relevant certifications of eligibility. The quantities and types of commodities given to eligible volunteers for their personal consumption must not differ from quantities and types of commodities regularly distributed to all others at the site.

   g. The PROVIDER shall immediately notify the STATE in writing of any complaints about TEFAP foods including such information necessary for the STATE or USDA to conduct an investigation.

   h. The PROVIDER shall provide adequate personnel to supervise and operate TEFAP and shall ensure distribution days and hours of operation are publicly posted.

3. **Loss of Commodities**

   a. The PROVIDER shall be legally liable to the STATE in the event of theft, damage, destruction, deterioration, unauthorized distribution or loss of TEFAP commodities. Out-of-condition USDA foods will be salvaged or destroyed according to the STATE’s instructions.
b. The PROVIDER will assume liability for any and all losses or improper distribution of food caused by other parties with whom the PROVIDER may enter into agreements for the performance of TEFAP activities.

c. The PROVIDER agrees to pay any claims assessed by the USDA or the STATE for any loss or damage to TEFAP foods resulting from the failure of the PROVIDER or other parties to properly store, care for, or handle the food.

d. In the event of damage, spoilage, theft, or other losses, the affected ERA and the PROVIDER, if different, will notify the STATE of such loss no later than two (2) business days after such loss is discovered. The STATE will notify FNS within five (5) additional business days of such loss. The affected ERA shall complete and submit the TEFAP Commodity Loss Report to the STATE.

e. The PROVIDER must obtain insurance to protect the value of their donated food inventories. The amount of insurance must be at least equal to the PROVIDER’s average monthly value of month-end donated food inventories in the previous fiscal year, as determined by one of the USDA donated foods-valuation methods outlined in 7 CFR §250.12(d).

4. Non-Displacement Requirement

Pursuant to 7 CFR §251.4(b), the PROVIDER and its ERAs receiving commodities pursuant to TEFAP shall not diminish its normal expenditures for food for the needy because of receipt of commodities through TEFAP. The PROVIDER shall disclose to the STATE all relevant information relating to its receipt, expenditures, and distribution of food commodities from sources outside TEFAP, and shall provide assurances satisfactory to the STATE that the PROVIDER is not in violation of the non-displacement requirements of 7 CFR §251.4(b).

5. Eligibility Criteria and Requirements for Recipients of TEFAP Food for Home Consumption and Distribution Requirements

a. The PROVIDER and/or its ERAs shall certify only individuals or households to participate in TEFAP who meet the following qualifications:

   i. Are residents of the City and County of Honolulu or the County of Kauai;

   ii. Are lawfully present in the United States, but need not be citizens of the United States; and

   iii. Have a total gross income no greater than 185% of the amount specified in the U.S. Federal Poverty Guidelines for the State of Hawaii.

b. The PROVIDER and/or its ERAs shall ensure each person/household receiving TEFAP commodities for home use shall apply for the benefit by completing the State of Hawaii’s Self-Declaration of Need Form or completing the State of Hawaii’s TEFAP Commodity Distribution Form.
c. Pursuant to 7 CFR §251.10 (a)(3), The PROVIDER and its ERAs must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the numbers of persons in the household and the basis for determining that the household is eligible to receive commodities for home consumption. The STATE-issued TEFAP Commodity Distribution form (or a facsimile of the form) shall be utilized when distributing TEFAP commodities for home use. Participants must sign the form each time they receive TEFAP commodities. The recorded signatures shall be retained by the PROVIDER as part of its permanent distribution record for a period of three (3) years.

d. Distribution rates shall be determined by household size by the ERA. The rates will vary according to availability. Households of the same size shall be provided the same amount of commodities as another household of the same size.

6. Eligibility Criteria for Recipients of TEFAP Prepared Meal Foods

The PROVIDER and/or its ERAs who serve meals must predominantly serve needy persons. No means test is required to determine eligibility for persons served through such programs. The ERAs must demonstrate to the satisfaction of the STATE that they serve predominantly needy persons.

7. Activities by ERAs Unrelated to TEFAP

The PROVIDER shall ensure activities unrelated to the distribution of TEFAP foods or meal service may be conducted at distribution sites as long as activities are in compliance with 7 CFR §251.10(f).

8. Rights of Recipients

a. Civil Rights Assurances of the PROVIDER

i. The agency hereby agrees that it will comply with: i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.); iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189); vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000); vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.); viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3); ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the
Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement. x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance. By accepting this assurance, the agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the agency, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the agency.

ii. The STATE, PROVIDER and its FRAs shall ensure that all eligible recipients are informed that eligibility for TEFAP commodities do NOT require participation in activities that are NOT related to the distribution of TEFAP commodities.
b. Posting of Nondiscrimination Statements are Required

i. The PROVIDER and its ERAs must prominently display the USDA "And Justice for All" (11" wide by 17" high) nondiscrimination poster in clear view of all TEFAP recipients at all its distribution sites.

ii. The PROVIDER and its ERAs shall ensure all materials, websites, or other electronic media for public information about TEFAP, including, but not limited to: the household eligibility application form (Self-Declaration Form), the TEFAP Commodity Distribution Form, public information releases concerning TEFAP, announcement of scheduled distributions, flyers, brochures, pamphlets, posters, and any other publications, including all electronic media must contain the USDA nondiscrimination statement as follows: "In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA."

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

iii. The PROVIDER shall ensure if the material is too small to permit the full statement to be included, the material will, at minimum, include the following statement in print size no smaller than the main text: "This institution is an equal opportunity provider."
c. Pursuant to FNS Instruction 113-1, the PROVIDER and its ERAs shall take reasonable steps to provide access to the information and services they provide to all eligible persons regardless of their proficiency in speaking, reading, or writing in the English language. Failure to provide services to participants or potentially eligible persons with Limited English Proficiency (LEP) or deny them access to federally assisted programs and activities may be discrimination based on national origin. The STATE recommends that ERAs maintain a list of bilingual staff and/or volunteers who can be utilized and/or shared with other ERAs to provide service to those with LEP.

d. The PROVIDER and/or its ERA under no circumstance shall require recipients to make any payment in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited in connection with the receipt of donated foods for any purpose pursuant to 7 CFR §250.1(b). No recipient may be asked, encouraged, or required to participate in any religious or political ceremony or oath, or to make or endorse any statement of religious or political loyalty of any kind as a condition of or inducement for the receipt of TEFAP commodities.

e. In accordance with FNS Policy Memo FD-138, the PROVIDER shall ensure that its ERAs participating in TEFAP that are faith-based or religious organizations shall:

   i. Post and make visible the TEFAP “Written Notice of Beneficiary Rights” to all TEFAP beneficiaries and prospective beneficiaries upon entrance into the distribution site that states:

      (1) The ERA may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

      (2) The ERA may not require beneficiaries or prospective beneficiaries to attend or participate in any explicitly religious activities that are offered by the ERA, and any participation by beneficiaries in such activities must be purely voluntary;

      (3) The ERA must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

      (4) Beneficiaries or prospective beneficiaries may report violations of these protections (including denials of services or benefits) by an organization to the STATE. The STATE will respond to the complaint and report the alleged violations to their respective USDA FNS Regional Office.

f. The PROVIDER shall ensure if a beneficiary or prospective beneficiary of TEFAP objects to the religious character of an ERA, the ERA must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternate ERA, if available, to which the beneficiary or prospective beneficiary has no objection. “Reasonable efforts” to refer an individual is as follows:

   i. The ERA must comply with all applicable State and local privacy laws and regulations.
ii. A referral may be made to another faith-based ERA, if the beneficiary or prospective beneficiary has no objection to that provider. If the beneficiary or prospective beneficiary requests a secular ERA and one is available, then a referral must be made to that ERA.

iii. The referral must be made to an alternate ERA that is in a reasonable geographic proximity to the organization making the referral and offer similar services in substance and quality, if one is available. The alternate ERA should have the capacity to accept additional clients.

iv. If the ERA determines that it is unable to identify an alternate ERA, the ERA must notify the PROVIDER or STATE. The STATE is ultimately responsible for ensuring an alternate ERA is identified, if available.

g. In accordance with FNS Instruction 113-1, Section XI, the PROVIDER shall provide civil rights training for all staff and volunteers who interact with clients and/or handle personal information on an annual basis. The PROVIDER shall ensure that ERAs provide training for their staff and volunteers on an annual basis. The PROVIDER and its ERAs shall maintain a civil rights file of all individuals trained to include date of training and signature of trainer. The STATE will provide the PROVIDER the civil rights training tools.

9. Prohibition of Fraud and Similar Activities

a. The PROVIDER and its ERAs shall not receive, conceal or retain TEFAP foods, funds, assets or property for personal use or gain. Knowing such items have been embezzled, willfully misapplied, stolen or obtained by fraud is subject to Federal and/or State criminal prosecution.

b. The PROVIDER shall ensure USDA commodities received under this agreement will be used solely for the benefit of those persons served or assisted by TEFAP, and will not be otherwise disposed of without prior written approval of the STATE. Under no circumstances will USDA foods be sold or traded. No USDA foods will be processed commercially without prior written consent of the STATE.

10. Confidentiality

The PROVIDER and its ERAs agree to confidentiality of all personal records, data, and other information pertaining to individuals or households receiving commodities. Confidential information may be released to the STATE or USDA upon written request for such information. ERAs are encouraged to participate in legitimate, academic, scientific, or similar research provided that the STATE is given at least 30 days advance notice and approves. At no time shall the confidentiality of the individuals being served be compromised by such research.
11. Storage and Food Safety

   a. The PROVIDER will ensure that it will follow all compliance with all requirements relating to food safety and food recalls pursuant to 7 CFR §250.4 (c)(2).

   b. If the PROVIDER utilizes any third parties or agencies to store USDA foods, this task must be agreed to in advance by both Parties in writing. Such agreements must contain the language required pursuant to 7 CFR Parts 250 and 251. The PROVIDER shall provide copies of such agreements to the STATE prior to implementation.

   c. In the management of donated foods, the PROVIDER and its ERAs shall use a first-in-first-out (FIFO) system of inventory management unless the STATE authorizes a different sequence of distribution. As part of implementing FIFO practices, the PROVIDER and its ERAs shall mark USDA donated foods cases or other containers with the date of their receipt at the storage facility. The PROVIDER and its ERAs shall be aware of the “use by” dates placed on food products by the manufacturers to determine how long food products can be expected to remain in optimal condition.

   c. The PROVIDER shall ensure that any third parties or ERAs provide adequate facilities for handling, storage and distribution of TEFAP foods. The facilities must be properly safeguarded against damage, theft, spoilage, or other loss as required in 7 CFR §250.12 and §250.14. Accordingly, such facilities must maintain donated foods in sanitary conditions, at the proper temperature and humidity, with adequate air circulation and comply with all Federal, State, or local requirements: The PROVIDER shall ensure the following:

   i. Facilities are sanitary and free from rodent, bird, insect, or other animal infestation;
   ii. Food is stored at proper storage temperature and humidity;
   iii. Dry: 50 – 70 degrees Fahrenheit;
   iv. Refrigerated: 36 – 40 degrees Fahrenheit;
   v. Freezer: -10 – 0 degrees Fahrenheit;
   vi. TEFAP commodities are separated from non-TEFAP commodities;
   vii. Stock is rotated utilizing FIFO inventory practices;
   viii. TEFAP food is stored at least 6” off the floor and away from walls in a manner to allow for proper ventilation;
   ix. Inventory records of product issuance are accurately maintained;
   x. Foods are stored away from hazardous item such as cleaning equipment and chemicals; and
   xi. Other protective measures are taken, as needed.
12. Physical Inventory

a. The PROVIDER and its ERAs shall take a semi-annual physical inventory of TEFAP commodities as of June 30th and December 31st of each calendar year. The physical inventory report shall be submitted to the STATE Program Specialist by July 31st and January 31st, respectively, of each calendar year, via email or mail. In the event that a PROVIDER or ERA maintains a storage inventory level exceeding a 6-month supply, the STATE may request justification for additional inventory. The STATE may transfer the excess inventory to other ERAs in need of commodities.

b. The PROVIDER is required to maintain inventory records for each USDA food item and reconcile the physical count with the book inventory at a minimum annually.

c. The STATE reserves the right to redistribute TEFAP foods in the PROVIDER's possession.

13. Food Alert System – Holds and Recalls by USDA

a. The PROVIDER shall provide to the STATE the name of their Food Safety Coordinator to include title, email address, and phone and fax number. The Food Safety Coordinator will act as a liaison between the PROVIDER and the STATE in the event of a USDA food hold or recall. The PROVIDER shall promptly notify the STATE of any changes in this designation or the person’s contact information. The PROVIDER shall ensure that each Supporting ERA appoint a Food Safety Coordinator, and notify the PROVIDER of the name, title, email address, and phone and fax number for that individual.

b. The PROVIDER shall comply with the instruction by USDA and the FNS concerning the handling of a TEFAP commodity placed on hold or recall by the USDA. The STATE shall notify the PROVIDER, who shall notify the respective ERAs to ensure compliance with the hold and/or recall instructions.

i. The PROVIDER shall be contacted within 24 hours of the STATE receiving the notification from USDA. The STATE will disseminate the recall notification and pass information needed to track the product to the affected PROVIDER; and

ii. The PROVIDER shall notify their respective ERAs of the recall notification, identify the location of the affected products, verify that the food item bears the product identification codes, isolate the commodities to avoid accidental use, and take an accurate inventory of location. The PROVIDER will be responsible to notify the STATE within 24 hours by fax, email, or telephone that the PROVIDER has communicated this recall notification to all its ERAs.

c. Once notified, the PROVIDER shall immediately place a sign stating “HOLD” on the commodity item (case[s] or pallet[s]) at all storage and distribution sites, to clearly identify those items on hold to prevent their distribution.
d. The PROVIDER must inform the STATE within five (5) days of the notification a TEFAP commodity has been placed on hold of the following:
   i. Quantity received;
   ii. Quantity distributed;
   iii. Quantity on hand; and
   iv. Location of recalled product on hold.

e. The PROVIDER and its ERAs shall hold the affected commodity until notified by the STATE that FNS has determined the following:
   i. It has been released by the USDA as fit for human consumption; and
   ii. That it is being recalled and can be destroyed locally or will be picked up by the vendor or PROVIDER. The PROVIDER shall consolidate recalled products at one location for pickup as soon as reasonably practicable.

f. The PROVIDER and its ERAs may not destroy, distribute, or use the product until it is notified to do so by STATE. A claim can be assessed against an ERA for destroying, distributing, or using a TEFAP commodity placed on hold without prior approval from the STATE.

g. USDA may reimburse the STATE, PROVIDER, or its ERAs for costs associated with the removal of TEFAP commodities that have been determined by the USDA to pose a health or safety risk. These costs include costs for storage, transportation, processing, and destructions. USDA may purchase additional TEFAP commodities to replace those commodities that have been destroyed. However, there is no assurance that the product will be replaced or that costs will be reimbursed.

14. Distribution of Commodities in Times of Declared Disaster or Emergency

a. During a declaration of disaster affecting the State of Hawaii by the President of the United States or by the Governor of the State of Hawaii, the PROVIDER or ERA may provide donated foods from current inventories to a disaster organization to distribute to households subject to FNS approval. However, the PROVIDER must obtain approval from the STATE before assistance is being provided and the period of time that it is expected to be needed (7 CFR §250.69). Households receiving disaster SNAP (D-SNAP) benefits are not eligible to receive such donated food assistance.

b. The PROVIDER shall prepare a distribution report to the STATE for disaster-related congregate feedings and mass distributions to individuals and households on a form specified by the STATE.
15. Record Retention

a. The PROVIDER and its ERAs shall maintain complete records pertaining to the receipt and distribution of TEFAP commodities for a minimum period of not less than three (3) years from the close of the FFY to which they pertain, or longer if the records are related to unresolved, claims, audits, or investigations pursuant to 7 CFR §250.16. At a minimum, these records will contain the following:
   i. Completed Self-Declaration Form;
   ii. Completed Distribution Forms;
   iii. Records of all USDA foods received, including date and quantity;
   iv. Receipts of delivery (including bills of lading);
   v. Inventory records of TEFAP foods on hand at the end of the month;
   vi. Invoices for distribution to ERAs;
   vii. Household information; and
   viii. Up-to-date listing of ERAs.

b. The STATE and USDA are authorized to inspect and audit all books and records pertaining to the TEFAP program, including financial records, at any reasonable time and place to ensure compliance with the above conditions.

c. The PROVIDER shall be responsible for collecting and reviewing the monthly TEFAP client sign-in/reporting form required of all ERAs receiving and distributing TEFAP commodities.

16. Monitoring and Investigation

a. Pursuant to 7 CFR §251.10 (e) (2), the PROVIDER’s TEFAP operations shall be monitored by the STATE to ensure that TEFAP commodities are being administered in accordance with Federal and State requirements. Unless specific exceptions are approved in writing by FNS, the STATE monitoring shall be on the following schedule:
   i. An annual monitoring of at least twenty-five percent (25%) of all PROVIDERS provided that each PROVIDER must be monitored at least once every four (4) years; and
   ii. An annual monitoring of one-tenth or twenty (20), whichever is fewer, of all ERAs that receive TEFAP commodities and/or administrative funds.

b. Monitoring shall be conducted, to the maximum extent feasible, to observe an actual distribution of commodities and/or meal service, and eligibility determinations, if applicable (7 CFR §251.10(e)(2)).
c. Monitoring shall encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and record keeping requirements, and compliance with civil rights requirements (7 CFR §251.10(e)(3)).

d. The STATE shall report its findings within 60 days and require corrective action to be taken to eliminate deficiencies identified. The STATE reserves the right to revisit and or investigate the PROVIDER and its ERAs at any time. The STATE shall indicate:
   i. The description of the identified deficiency;
   ii. The description of corrective action(s) required or request for corrective action(s); and
   iii. The timeline for corrective action(s) and a request for documentation as needed to confirm compliance.

e. The PROVIDER and/or ERA shall take corrective action within sixty (60) days. Failure to take corrective action will result in termination from TEFAP.

f. The PROVIDER shall be responsible for program oversight of any third party operating any aspect of TEFAP through monitoring a minimum of once a year to ensure compliance with all applicable Federal and State regulations, rules and policies, including ongoing training of key distribution site staff.

g. The STATE and the USDA are authorized to inspect TEFAP foods in storage or the facilities or warehouses used in the handling or storage of TEFAP foods at any reasonable time.

17. General Reservations of Authority and Discretionary Powers of the Hawaii Office of Community Services

Except as may be expressly stated in this contract, nothing herein is intended to constitute a waiver of any authority of the STATE under applicable Federal Statues, federal regulations, or Hawaii State laws, and the STATE retains all discretionary powers allowed to it under all such laws and regulations.

18. Food Purchase Distribution Program Requirements

a. The PROVIDER shall use the Food Purchase Distribution Program (FPDP) funds only on operational costs associated with the receipt, storage, and distribution of the FPDP foods.

b. The FPDP funds shall be obligated by the PROVIDER by December 31, 2020 and liquidated by the PROVIDER by March 31, 2021.
19. Agreement/Termination

This agreement between the STATE and the PROVIDER is considered permanent, with amendments to be made as necessary. This agreement may be terminated by either party upon 30 days' written notice. The PROVIDER must provide to the STATE, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

PERFORMANCE REQUIREMENTS

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<th>Performance Requirements</th>
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<th>Kauai</th>
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<td>Number of distribution activities per month</td>
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<td>Number of supporting eligible recipient agencies</td>
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