

FOOD SERVICE AGREEMENT

THIS FOOD SERVICE AGREEMENT ("Agreement") made as of July 1, 2002, by and between **COMPASS GROUP USA, INC.**, by and through its **CHARTWELLS** Division ("Chartwells"), and the Whittemore-Prescott Area Schools (the "School Food Authority" or "SFA").

WITNESSETH:

WHEREAS, the SFA wishes to retain Chartwells to provide certain food and food related services at the SFA's premises located at all of the campuses within the jurisdiction of the SFA (collectively, the "Facility");

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, Chartwells and the SFA agree as follows.

Section 1. PURPOSE OF THE CONTRACT

1.1. Appointment of Chartwells. The SFA hereby retains Chartwells and grants to Chartwells the exclusive right to provide and manage the SFA's food service operation at the Facility.

1.2. General Purpose. Chartwells will be responsible for all of the SFA's food service operations and will prepare and serve wholesome, nutritious and appetizing meals to the reasonable satisfaction of the SFA. Chartwells shall comply with the applicable provisions of the National School Lunch Act as amended, the School Breakfast Program and the Department of Agriculture regulations set forth in *7 CFR 210*, *7 CFR 220*, *7 CFR 245*, *7 CFR 250* and any requirements imposed by any applicable state agency.

1.3. Independent Contractor. Chartwells shall be an independent contractor and shall retain control over its employees and agents. Chartwells shall be free to perform services for any other SFA, company or organization during the term of this Agreement.

Section 2. COMMENCEMENT & TERMINATION

2.1. Commencement and Term. This term of this Agreement shall be for one (1) year beginning on July 1, 2002 and continuing until June 30, 2003, unless terminated by either party as hereinafter provided. The parties may by mutual agreement renew this Agreement for up to four (4) successive one (1) year renewal periods. *7 CFR 210.16(d)*

2.2. Termination. Either party may, during the life of the Agreement, terminate this Agreement with or without cause, by giving sixty (60) days notice in writing to the other party of its intention to do so. *7 CFR 210.16(d)*

2.3. Breach. If either party breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party written notice of such Cause. If the Cause is remedied within thirty (30) days of receipt of notice, the notice shall be void. If such Cause is not remedied within thirty (30) days of receipt of notice, the party giving notice shall have the right to termi-

nate the Agreement upon expiration of such remedy period. However, 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 control such as fire, explosion, water, act of God, civil disorder or disturbances, labor disputes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules, and regulations or like causes beyond the reasonable control of such party or the damage or destruction of real or personal property of such causes. In addition, the parties agree that nothing in this paragraph modifies the parties' right to terminate this Agreement by giving 60 days notice in accordance with Section 2.2 above. *OMB Circular No. A102, Attachment 0, Paragraph 14.b*

2.4. Penalty Provision. If Chartwells has breached the terms of this Agreement, and Chartwells has not cured the breach, the SFA may elect to pursue any available administrative, contract, or legal remedy, or to administer the following sanctions: (i) for a first violation, a written reprimand; (ii) for a second violation, a \$25.00 penalty; or (iii) for a third violation, a \$50.00 penalty (*OMB Circular No. A-102, Attachment 0, Paragraph 14a.*). 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 involves.

Section 3. EMPLOYEES

3.1. Personnel Obligations. Chartwells 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. Chartwells 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 workers' compensation costs and charges.

3.2. Equal Opportunity Employer. The SFA and Chartwells shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations. (*Appendix C: OMB Circular No. A-102, Attachment 0, Paragraph 14.c*)

3.3. Work Hours. Chartwells and the SFA shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (*40 USC 327-330*) as supplemented by Department of Labor regulations (*29 CFR, Part 5*) (*Appendix C: OMB Circular No. A-102, Attachment 0, Paragraph 14.f*)

3.4. Hours. Chartwells is expected to recommend the number of work hours and the number of positions required at each school location.

3.5. Background Checks. Chartwells shall adhere to applicable state and federal regulations in screening prospective employees. Chartwells shall comply with criminal background checks and fingerprint regulations required by law for all new hires.

3.6. Regulations. Chartwells 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 Chartwells.

3.7. Removal of Employee. The SFA may provide Chartwells with written notice that it requires the removal of an employee of Chartwells if such employee violates health requirements or conducts himself/herself in a manner which is detrimental to the physical, mental or moral well-being of students, staff or faculty. In the event of the removal of any such employee, Chartwells shall immediately restructure its staff without disruption in service.

3.8. Emergency Devices. All food service personnel assigned to each school shall be instructed on the use of all emergency switches, fire and safety devices in the kitchen and cafeteria areas.

3.9. Senior Management. Chartwells shall inform the SFA prior to hiring Senior Management positions for the SFA's Food Service Program. Specifically, all persons to be hired as Food Service Directors, Assistant Directors, and Supervisors must be presented for the SFA's evaluation and approval. Noncompliance will be considered a breach of contract.

3.10. Non-Compete. Chartwells employees performing Services or administrative work on Premises shall be subject to the rules and regulations established by the SFA as reasonable and necessary for its Premises, operation facilities, service equipment, offices and utilities. Neither party shall during the term of this Agreement or for one year thereafter solicit to hire, hire or contract with either party's employees, or other management employees of Chartwells in other districts who manage any services or any other employee or are highly compensated employees as defined in Section 414(q) of the Internal Revenue Code ("One-Year Non-Solicitation"). In the event of any breach of such One Year Non-Solicitation, the breaching party shall pay and the injured party shall accept an amount equal to the annual salary of the relevant employee as liquidated damages.

Section 4. MANAGEMENT SERVICES & SPECIAL FUNCTIONS

4.1. Management Services. Chartwells will provide all management and administrative services required for the efficient supervision and operation of SFA's food service programs. The resident food service director's salary and fringe benefits will be a direct reimbursable cost of operation.

4.2. Special Functions. Chartwells will provide food services for administration and student related functions as reasonably requested by SFA. All food and labor costs for these functions will be billed directly to the school organization involved, unless otherwise specified by the SFA. Any special arrangements regarding other costs which might be incurred at these functions may be negotiated between Chartwells and the organization.

Section 5. EQUIPMENT, FACILITIES & UTILITIES

5.1. Facilities and Equipment. The SFA shall make available, without any cost or charge to Chartwells, the facilities and equipment necessary for Chartwells to provide food service, including, but not limited to, area(s) of the Facility agreeable to both parties in which Chartwells shall render its services, kitchen equipment, smallwares, suitably furnished office space, and facilities for the safekeeping of funds.

5.2. Condition of Facilities and Equipment. The facilities and equipment provided by each party for use in food service operations shall be in good condition and maintained to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health. Chartwells 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. Chartwells shall not be held accountable for pre-existing conditions. At the expiration of this Agreement, Chartwells 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 Chartwells, except through the negligence of Chartwells or its employees, or for any other reason beyond the control of Chartwells.

5.3. Utilities. The SFA shall furnish, at its expense, light, power, hot and cold water, telephone service and other utilities as are necessary for the operation of the food services to be furnished hereunder.

5.4. School's Use of the Facilities. The SFA is encouraged to utilize Chartwells 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 lunch or breakfast periods, provided such use does not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs.

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

5.6. 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 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. The SFA shall return the facilities and equipment to Chartwells in the same condition as received, normal wear and tear excepted.

Section 6. MAINTENANCE, REPAIRS, & SANITATION

6.1. Maintenance. The SFA shall furnish without cost to Chartwells all building maintenance and all repairs to the food service areas and will replace, repair, and maintain its equipment, except when damage results from the negligence of Chartwells or its employees. The SFA shall at its expense, provide maintenance personnel and outside maintenance services, parts and supplies for properly maintaining the facilities and its equipment.

6.2. Cleaning. The SFA will be responsible for the cleaning and maintenance of floors, windows, walls, light fixtures, ceilings, hoods, ducts, grease traps and the general care of the dining, service and kitchen areas. Chartwells shall direct SFA employee in the routine cleaning of the kitchen, serving areas, dish rooms and storerooms, including the ordinary and routine

cleaning of counters and operating equipment used in connection with the operation of the food service.

6.3. Sanitation. The SFA shall, at its expense, provide for the daily removal of waste and garbage and regular extermination services.

Section 7. INVENTORY

7.1. Inventory. Chartwells 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. Chartwells 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.

7.1.1 Chartwells 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 commodities.

7.2. Purchasing. Chartwells will purchase all food for the SFA at the lowest prices possible 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.

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

7.2.2 Chartwells 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.

7.3. Rebates. All goods, services or moneys received as the result of a rebate under a processing contract must be utilized in the SFA's nonprofit food service.

Section 8. FOOD SERVICE

8.1. Menus. Chartwells shall consult with an advisory board, comprised of such members as the SFA shall designate, regarding the overall operation of the SFA's food service program, including menus. Chartwells will, at SFA request, submit menus for approval to the SFA. Any menu changes may only be made with the approval of the SFA. Seasonal changes, special school programs, 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.

8.2. Control of Food Service. The SFA shall retain control of the quality, extent, and general nature of its food service. 7 CFR 210.16(a)(4)

8.3. Food Specifications. The SFA must provide detailed specifications including, but not limited to, grade and weight for each food component or menu item as specified in 7 CFR Part 210 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. 7 CFR 210.16(c)(3)

8.4. 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. 7 CFR Part 210.16(c)(3)

8.5. Nutrition Education. Chartwells 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.

Section 9. ACCOUNTING, RECORDS & AUDITS

9.1. Records. Chartwells 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. 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 Chartwells for the purpose of preparing monthly reimbursement vouchers. 7 CFR 210.16(c)(1) and 7 CFR 210.23(c)

9.2. 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 Chartwells which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts and transcriptions. A-102-014(h)

9.3. Reimbursement Records. Chartwells 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)

9.4. Revenue Records. Chartwells shall retain revenue records broken down by source, type and category of meal or food service (e.g., a la carte sales, reduced price and full price National School Lunch Program, School Breakfast Program meals and vending machine sales, etc.).

9.5. Invoices. Chartwells shall invoice the SFA monthly a sum not to exceed the amount necessary to cover Chartwells' expenditures for the food service operation and/or the submission of a valid claim for the items designated in Section 10. Chartwells will provide a reconciled monthly statement with costs listed in the following categories: (i) management fee, (ii)

administrative fee, and (iii) operating expenses. Payment shall be due within ten (10) days of receipt of the monthly invoice.

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

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

9.8. Taxes and Assessments. Chartwells shall pay when due all federal, state, local and other governmental taxes or assessment in connection with the operation and performance of the Services, exclusive of all sales tax arising in connection with the provision or sale thereof ("Sales Tax"). Chartwells in its sole and exclusive discretion shall determine whether Service transactions are subject to Sales Tax and the SFA is liable for and promises to pay to Chartwells the amount of such Sales Tax per the billing statement. If the parties' joint examination of relevant statutes fails to resolve any dispute or controversy regarding the taxability of Service transactions, then such dispute or controversy shall be settled finally by a relevant ruling administered by the applicable state department of revenue in response to the parties' application therefor. The SFA represents and warrants that it has not relied on any Chartwells guaranty or assurance, express or implied, as to either the taxability of Service transactions or SFA's tax exempt status, but rather, the SFA has relied and covenants that it will continue to rely solely upon its own judgment and/or the professional advice of its consultants in assessing and determining such matters. The SFA shall pay when due all federal, state, local and other governmental sales, use and property taxes or assessments arising in connection with the Premises, Services equipment, offices, utilities and payment of SFA obligations. Chartwells shall pay when due all license and permit fees in connection with Services. The SFA shall reimburse Chartwells for all license and permit fees paid in connection with Services.

Section 10. FINANCIAL, PURCHASING & MEAL PAYMENT

10.1. General Provisions. All management/administrative fees shall be specifically stated in this Agreement. Such fees may be calculated on a cents per meal or flat fee basis. Chartwells will operate, administer, and manage the food service for SFA in accordance with the financial arrangements as set forth in this Section 10. 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)*

10.2. Operating Expenses. Chartwells shall charge the SFA its costs of operating the food service which shall include, but not be limited to: (i) the cost of goods, including food, beverages and supplies; (ii) salaries and wages of all of Chartwells employees, including payroll taxes, benefits, training and bonus accrual; and (iii) other costs, charges and expenses necessary to perform the duties and obligations under this Agreement including, but not limited to, office supplies, insurance, marketing, training, licenses/permits, laundry, amortization expense, uniforms, postage, paper goods, and taxes.

10.3. Administrative Fee. Chartwells shall charge SFA an Administrative Fee of \$88.00 per day for each day of service for a minimum of 180 days as provided in the SFA's RFP. The Administrative Fee shall increase consistent with USDA guidelines and the proposed language contained in our proposal. Chartwells' Administrative Fee represents its overhead expenses necessary to operate the food service including, but not limited to, area and zone supervision and general support provided by Chartwells' corporate offices (accounting, purchasing, tax, legal, research, auditing, other related administrative functions, etc.).

10.4. Management Fee. Chartwells shall charge the SFA a Management Fee of \$.0325 per meal served. Total meals are calculated by adding reimbursable meal pattern meals (breakfast and lunch) served and meal equivalents. Cash receipts, other than from Sales of National School Lunch Program and School Breakfast Program meals served to children, shall be divided by \$2.24 to arrive at an equivalent meal count. The per meal Management Fee will be multiplied by total meals.

10.5. 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.

Section 11. COMMODITIES

11.1. Benefit of SFA Only. Chartwells agrees that any USDA-donated commodities received by the SFA and made available to Chartwells must accrue only to the benefit of and be used only in the SFA's nonprofit school food service. *7 CFR 210.16(a)(6)*

11.2. Proper Use and Handling. The liability for the proper use of these commodities will be the responsibility of Chartwells. Chartwells shall maintain accurate and complete records with respect to the receipt, use/disposition, storage and inventory of donated foods. Failure by Chartwells 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 Chartwells in connection with any claim for improper distribution, use or loss of, or damage to donated foods. *7 CFR 250.12(b)(4)*

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

Section 12. INSURANCE & INDEMNITY

12.1. Each party shall indemnify, defend, and hold harmless the other from any and all losses, damages or expenses, including reasonable attorneys' fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage or other injury or damage if caused by any negligent or willful act or omission of such party (except to the extent caused by the negligent or willful act or omission of the other party, its employees or agents). Notwithstanding the foregoing, Chartwells shall not be required to indemnify SFA for any claim or action brought by an employee of Chartwells against SFA.

12.2. Notification of an event giving rise to an indemnification claim (Notice) must (a) be received by the indemnifying party on or by the earlier of a date 30 days subsequent to the date which such event was or should have been discovered or 90 days subsequent to the effective

termination date of this Agreement and (b) 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.

12.3. Compass shall obtain and maintain insurance for the following risks in such amounts under such policies as appropriate: general liability (including contract, liquor, products-completed operations and business automobile coverage) and worker's compensation (including employer's liability coverage).

12.4. Certificates of Insurance for such coverage and naming the SFA as an additional insured will be furnished upon 30 days' prior notice.

12.5. SFA shall obtain and maintain insurance for the operation facilities, 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.

Section 13. SFA RESPONSIBILITIES

13.1. 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)*

13.2. 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)*

13.3. Health Certification. The SFA shall maintain applicable health certification and be assured that all state and local regulations are being met by Chartwells preparing or serving meals at the Facility. *7 CFR 210.16(a)(7)*

13.4. Pricing. The SFA shall establish all program and non-program meal and a la carte prices. The SFA shall establish all prices, including price adjustments for food items served under the nonprofit SFA food service account (e.g., reimbursable meals, a la carte service, adult meals and vending machines).

13.5. Menu Cycle. The SFA shall develop and include in the invitation to bid or request for proposal a 21-day cycle menu. Chartwells 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)*

13.6. 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. *7 CFR 210.16(a)(5)*

13.7. 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)*

13.8. Reimbursement Claims. The SFA shall be responsible for signing reimbursement claims. This responsibility cannot be delegated to Chartwells. *7 CFR 210.16(a)(5)*

13.9. 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)*

13.10. Financial Responsibility. The SFA shall retain control of the school food service account and overall financial responsibility for the School Nutrition Programs. *7 CFR 210.19(a)(1)*

13.11. 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)*

13.12. 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*

13.13. 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 Chartwells. *7 CFR 245.6*

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

13.15. Commodity Processing Contracts. The SFA shall establish commodity processing contracts. This responsibility cannot be delegated to Chartwells. *7 CFR 250.12(f)*

13.16. A la Carte Offering. In order to offer a la carte food service, the SFA must offer all eligible children reduced price and full price reimbursable meals. *7 CFR 210.16(a)*

13.17. Losses. The SFA shall be responsible for any losses which may arise due to circumstances beyond the control of the SFA or Chartwells, such as loss of electrical power.

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

13.19. Equipment Damage. The SFA shall be responsible for loss or damage not caused by Chartwells to equipment owned by the SFA and located on its premises.

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

13.21. Fixture Repairs. The SFA shall be financially responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating vents, hoods and all other electrical work.

13.22. Utilities. The SFA shall furnish at its expense, space, light, heat, power, hot and cold water, and other utilities as are necessary for the operation of the food services to be furnished hereunder.

13.23. Food Service Areas. The SFA shall make available without cost to Chartwells areas of the Facility agreeable to both parties in which Chartwells shall render its services, such areas being reasonably necessary for providing efficient food service.

13.24. Additional Food Service Programs. The SFA may request that Chartwells enter into a separate contract to provide services for additional food service programs not currently in operation, including but not limited to, Summer School Program and Child Care Feeding Program, upon terms and conditions mutually agreeable to the parties.

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

13.26. Trash Removal. The SFA shall have designated areas for the removal of all garbage and trash.

13.27. Painting. The SFA shall be responsible for painting within the dining areas.

13.28. Cleaning. The SFA shall be responsible for routine cleaning and periodic buffing and waxing of dining rooms. The walls, ceilings, windows, blinds, ducts and hoods above the filter lines within the dining rooms will also be maintained by the SFA.

13.29. Toilet Facilities. The SFA shall make available sanitary toilet facilities for the employees of Chartwells.

Section 14. HEALTH CERTIFICATION

14.1. Health Certification. Chartwells shall have state or local health certification for any facility outside the SFA in which it proposes to prepare meals and Chartwells shall maintain this health certification for the duration of the contract. *7 CFR 210.16(c)(2)*

14.2. Safety Regulations. Chartwells shall obtain and post all applicable health permits for its facilities. Chartwells shall comply with all health and safety regulations required by federal, state or local law.

Section 15. ENVIRONMENTAL & ENERGY COMPLIANCE

15.1. Environmental. The SFA and Chartwells shall comply with all applicable standards, orders, or requirements issued under *Appendix C: OMB Circular No. A-102, Attachment 0, Paragraph 14.i* as follows: (i) Section 306 of the Clean Air Act, (ii) Section 508 of the Clean Water Act, (iii) Executive Order 11738, and (iv) applicable Environmental Protection Agency

regulations. Violations shall be reported to the United States Department of Agriculture and to the USEPA Assistant Administrator for Enforcement (*EN-329*).

15.2. Energy. The SFA and Chartwells shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (*Appendix C: OMB Circular No. A-102, Attachment 0, Paragraph 14.j*).

Section 16. DEBARMENT/SUSPENSION CERTIFICATE

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

16.2. 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 17. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

17.1. Independent Price Certification. Chartwells 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*

17.2. Certificate of Independent Price Determination. Chartwells and the SFA shall sign and submit a Certification of Independent Price Determination with the Agreement. Chartwells 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 18. LOBBYING ACTIVITIES

18.1. Lobbying Certification. Chartwells will sign and submit a certification regarding lobbying which conforms in substance with language in *7 CFR 3018*

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

18.3. Disclosure of Lobbying Activities. Chartwells shall disclose lobbying activities in connection with school nutrition programs. *7 CFR 3018*

18.4. Location of Disclosure Form. The lobbying disclosure form shall be attached to the signed Agreement and kept on file at the SFA. A copy of the certification shall also be forwarded to the state agency with the signed Agreement. *7 CFR 3018*

Section 19.

GENERAL TERMS & CONDITIONS

19.1. Governing Law. This Agreement, its construction, validity, effect, performance and enforcement shall be governed by and construed under the laws of the state where the SFA is located.

19.2. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to operation of food service and supersedes all prior or contemporaneous negotiations, discussions or understanding. 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.

19.3. 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.

19.4. 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.

19.5. 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.

19.6. 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 Chartwells or its affiliated and parent companies (collectively "Marks") are proprietary Marks of Chartwells and the SFA will not use the Marks for any purpose except as expressly permitted in writing by Chartwells. Upon termination of this Agreement, the SFA shall (a) immediately and permanently discontinue the use and display of any Marks and make or cause to be made such changes to the Premises as Chartwells shall reasonably direct so as to effectively distinguish the Premises from its former appearance (collectively "De-Image"), and (b) immediately remove and deliver to Chartwells all goods bearing any Marks. If the SFA shall fail to De-Image the Premises within 30 days of the termination date, then Chartwells and its agents shall have the right to enter the Premises and De-Image the Premises, without prejudice to Chartwells' other rights and remedies.

19.7. 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 overnight de-

livery service, or by United States mail, postage prepaid, certified mail, 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: Whittemore-Prescott Area Schools
ATTN: Superintendent
8790 Prescott Rd.
Whittemore, MI. 48770

To Chartwells: Chartwells
ATTN: President - Schools
3 International Drive
Rye Brook, NY 10573

With a copy to: Compass Group USA, Inc.
ATTN: General Counsel
2400 Yorkmont Road
Charlotte, North Carolina 28217

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

WHITTEMORE-PRESCOTT AREA SCHOOLS

By: [Signature]

Title: Interim Superintendent

Date: 6.21.02

COMPASS GROUP USA, INC. BY AND
THROUGH ITS CHARTWELLS DIVISION

By: Kevin T. All

Title: President

Date: 7/1/02