



[www.HealthierGeneration.org](http://www.HealthierGeneration.org)

**REQUEST FOR PROPOSAL**

**FOR**

***Alliance for a Healthier Generation  
Competitive Foods Progress Report***

***DUE DATE:***

***By 12:00 NOON, November 12, 2009***

*E-Mail Complete Proposal Package To [laura.hatch@healthiergeneration.org](mailto:laura.hatch@healthiergeneration.org)*



## Request for Proposal/Bid for Research & Evaluation Services

### REQUEST FOR PROPOSAL/BID FOR Alliance for a Healthier Generation Competitive Foods Progress Report

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## Request for Proposal/Bid for Research & Evaluation Services

### **1. OVERVIEW**

The Alliance for a Healthier Generation, founded by the American Heart Association and the William J. Clinton Foundation, is requesting the services of an experienced, highly qualified organization to evaluate and report on the progress of the implementation of the Alliance Competitive Foods Guidelines in schools. Your organization is invited to submit a proposal that meets the specifications outlined in this document.

Criteria to be used in evaluating responses to this Request for Proposal (RFP) include, but are not limited to:

- Firm Qualifications and Experience
- Demonstrated knowledge of relevant subject matter
- Project Team and Project Management Strength
- Project and Schedule Understanding and Approach
- References
- Cost

**Responses are to RFP due by Noon Eastern Standard Time on November 12, 2009**, in electronic format [Microsoft Word 2003]. Supplemental materials may be submitted in hard copy form and must also be received by the aforementioned deadline. If submitting hard-copy supplemental materials, please supply 2 copies. We anticipate making a selection decision by (Insert Date). Work will begin immediately following finalization of contract.

RFP and materials to be submitted to:

Laura Hatch  
Alliance for a Healthier Generation  
[laura.hatch@healthiergeneration.org](mailto:laura.hatch@healthiergeneration.org)

Supplemental hard copy materials may be sent to:

Laura Hatch  
Alliance for a Healthier Generation  
1150 Connecticut Avenue, NW  
Suite 300  
Washington, DC 20036]  
202 785 7958

Address all questions to:

Laura Hatch  
Alliance for a Healthier Generation  
[laura.hatch@healthiergeneration.org](mailto:laura.hatch@healthiergeneration.org)



## Request for Proposal/Bid for Research & Evaluation Services

### **2. BACKGROUND INFORMATION**

#### **About the Alliance for a Healthier Generation**

The Alliance for a Healthier Generation was founded in 2005 by the American Heart Association and the William J. Clinton Foundation. Our mission is to reduce the prevalence of childhood obesity by 2015. In order to accomplish this, the Alliance works through four initiatives – schools, industry, healthcare and kids – to make real changes that will improve the health of this generation.

The Alliance Healthy Schools Program (HSP) is working to create healthier school environments by supporting schools to implement best practices in the following areas: Policy/Systems, School Meals, Competitive Foods & Beverages, Health Education, Physical Activity, Before and Afterschool Programs, School Employee Wellness and Physical Education.. The HSP provides support to more than 5,000 schools including intensive support to more than 2,500 schools that serve the highest need students to help them implement these programs. Schools that succeed in developing healthier school environments are recognized nationally at the bronze, silver, gold, and platinum levels.

The Alliance Industry Initiative is based on the belief that companies can make a positive contribution to the prevention of childhood obesity while continuing to be successful. The Alliance engages in discussions with a range of industry segments – food, beverage, restaurants, fitness, entertainment, and gaming – to establish voluntary agreements that improve children’s access to healthier foods and beverages and encourage physical activity. To date, the Alliance has active agreements with the beverage, dairy, and snack food industries with the goal of accelerating the shift to lower-calorie and more nutritious beverages and snacks that children consume during the regular and extended school day. After two years of implementation, the Alliance Beverage Guidelines resulted in a 65% decrease in full-calorie drink sales to schools and an overall 58% decrease in beverage calories shipped to schools.

The Alliance Healthcare Initiative has also brokered an agreement with the healthcare industry – including insurers, large employers and providers – to provide reimbursement for the assessment, treatment and prevention of childhood obesity.

The Alliance Kids’ Movement is a “by kids, for kids” initiative to empower all kids to make healthy behavior changes and become leaders and advocates for healthy eating and physical activity. The goal is to engage kids through a media and grassroots awareness campaign, educate them with a Healthy Living program that is fun and interactive and activate them to spark change in their own communities.

#### **RFP Specific Background**

This particular project will involve the Alliance’s Industry Initiative and Healthy Schools Program.

The Alliance Competitive Foods Agreement ( henceforth, “MOU”) was signed in October 2006 when five of the nation’s leading food manufacturers joined with the Alliance to implement science-based guidelines to make healthier snack food choices available to students in the school environment. The Guidelines (included in Exhibit A) promote the consumption of fruit, vegetables, nutrient-rich foods, fat-free and low-fat dairy products and place limits on calories, fat, saturated fat, trans fat, sugar and sodium. The Guidelines cover snack foods and side items offered outside of the reimbursable meal program, such as products sold in school vending machines, a la carte lines, snack carts, fundraisers and school stores.

To date, 22 companies have signed onto the agreement, making the commitment to produce or reformulate products that meet the Guidelines and to market these products in the schools channel. Most of these foods are sold to schools and school districts by independent food distributors and contract



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operators. Some competitive foods are purchased from retail locations by school administrators, faculty members and coaches to sell at school stores or for use in connection with school activities. School vending machines are usually stocked by third-party vending companies. The nature of this purchasing channel is decentralized and involves third parties such as independent food distributors, contract operators, vending brokers, and vending service companies. Therefore, neither the manufacturers nor the Alliance are able to track progress through sales or shipment data.

Implementation of the Alliance Competitive Foods Guidelines is one of the areas in which the Alliance provides support to schools. The Alliance tailors its technical assistance to schools and while it encourages all schools to adopt the Guidelines, schools might choose to do so at different stages of their involvement in the Healthy Schools Program.

### **3. SCOPE OF WORK**

The company/organization that is selected to do the research and report about the implementation of the Alliance's Competitive Foods MOU will be responsible for designing, administering and reporting the results of an evaluation of the implementation of the Competitive Foods Agreement.

#### Evaluation Design

A comprehensive evaluation design should be presented that addresses the methodology and administration plan to be used in performing the research.

#### Data Collection

Data will be collected from a representative sample of schools\*\* across the country and participating industry companies in order to map progress since 2006.

\*\* For the schools that are participating in the HSP, some of these data are already available. The selected vendor will need to coordinate with RMC Research to mine existing data from HSP schools that are relevant to the research questions in this proposal.

#### *Industry research:*

The specific scope of data collection from participating companies of the MOU should focus on:

- Changes in reformulation and resizing
- New compliant products introduced
- Percent of compliant products in school portfolio per company
- Marketing efforts to promote healthier products (website development, sell sheets, advertisements, media outreach, etc)
- Supporting efforts to educate schools about the Guidelines, healthy eating, etc.

Data collection from industry participants should include all 5 original signatories (Campbell's, Kraft, Mars, PepsiCo, and Dannon), and a representative sample from the additional signatory companies. The Alliance will provide contact information for companies and will promote participation in the research process.



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### *Schools research:*

- Measure success of implementing the Guidelines in elementary, middle and high schools
- Report the nutrition composition of products in vending machines, school stores, and a la carte lines
- Assess the financial impact of implementing the changes
- Identify supporting efforts that were made to encourage positive change (students, marketing, vendors, etc)
- Identify key challenges in implementing the Guidelines.

### Deliverables

- Evaluation design
- Implementation Plan
- Data sets from schools and companies in SPSS format.
- A comprehensive report addressing all areas specified in the RFP, as well as other noteworthy findings.

The Alliance for a Healthier Generation reserves the right to make changes in the specifications as listed or to add items as needed.

### Project Goals

The goal of this evaluation is to investigate the following areas:

1. What types of Competitive Foods are offered for sale to students in schools during the times of day specified in the MOU?
2. Has the competitive foods product mix offered at schools changed since the inception of the MOU? If so, how?
3. How are the schools implementing the Guidelines through a la carte, vending, school stores, and fundraisers?
4. What are the economic impacts, if any, that exist for schools implementing the Alliance's Competitive Foods Guidelines?
5. What are the facilitators and barriers to schools making the transition to the Alliance's Competitive Foods Guidelines and/or other healthier options?



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### **4. REQUIRED INFORMATION FROM APPLICANT**

**Applicant must provide the following as part of their proposal. Please respond using the following numbering sequence:**

1. A detailed description of the proposed evaluation, including draft methodology and timeline.
2. A detailed description of your company/organization's capacity to carry out this research in a timely manner and a description of your work in similar arenas.
3. A description of proposed team for this project.
4. A detailed itemization of any fees, charges, etc. that the Alliance would be responsible for and acknowledgement of acceptance of the invoicing terms listed in Section 7.
5. Acknowledgement of acceptance of Contract Template or list of requested changes to Contract Terms and Conditions attached in Exhibit B.
6. At least three references of clients who have completed a research/evaluation project similar to the one you propose, including name, phone number and email address. At least one reference should be a non-profit organization.
7. If possible, provide an example of a research report conducted for a similar client (if a public report is available).



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### **5. TIMELINE FOR RFP/BID**

The following timetable will serve as a general guideline for the issuance, evaluation, and award of this Request for Proposal (RFP).

October 12, 2009	Issue Request for Proposal/Bid
October 26, 2009	Applicants must notify Laura Hatch at the Alliance (laura.hatch@healthiergeneration.org ) as to whether or not they plan to submit a response.
November 2, 2009	Last date for applicants to submit written questions
November 6, 2009	Latest that Alliance will issue written response to all questions
November 12, 2009	Proposals/Bids due no later than 12:00 p.m. (ET)
Week of November 16, 2009	If needed, conduct interviews with finalists
November 30, 2009	Provider(s) selected
December 2009	Data collection methodology presented and agreed upon
January/February 2010	Data collection process starts
March 2010	Raw data presented to the Alliance
May 2010	Report presented to the Alliance
June/July 2010	Public release of the report

**The Alliance for a Healthier Generation may need to change portions of this timetable due to alterations in its operating schedule. Receipt of this RFP does not represent in any way an offer or contract from the Alliance for a Healthier Generation. Any costs incurred by the applicant in the proposal process are the sole responsibility of the applicant.**



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### **6. APPLICANT/VENDOR RESPONSE AND CONTACT WITH THE ALLIANCE**

**Responses to RFP are due by Noon Eastern Standard Time on November 12, 2009**, in electronic format [Microsoft Word 2003]. Supplemental materials may be submitted in hard copy form and must also be received by the aforementioned deadline. If submitting hard-copy supplemental materials, please supply 2 copies. Decisions on contract expected by **November 30, 2009**. Work to begin immediately following finalization of contract.

RFP and materials to be submitted to:

Laura Hatch  
Alliance for a Healthier Generation  
[laura.hatch@healthiergeneration.org](mailto:laura.hatch@healthiergeneration.org)

Supplemental hard copy materials may be sent to:

Laura Hatch  
Alliance for a Healthier Generation  
1150 Connecticut Avenue, NW  
Suite 300  
Washington, DC 20036]  
202 785 7958

1. Questions regarding the bid specifications or RFP process should be electronically addressed to [laura.hatch@healthiergeneration.org](mailto:laura.hatch@healthiergeneration.org). Questions must be received before noon EST on November 2, 2009.
2. Responses to questions posed by a vendor will be issued back to all other vendors to the proposal no later than November 6, 2009. If requested, the Alliance will hold an open conference call to clarify the project and process. All vendors will be invited.
3. The Alliance for a Healthier Generation will assume no cost for proposal presentation and submission.



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### **7. VENDOR SELECTION CRITERIA**

Vendors will be selected based on overall qualifications and experience, demonstrated knowledge of relevant subject matter, project team and project management strength, project and schedule understanding and approach, references and cost.

Proposals will be considered that have a value up to \$60,000.

#### **Evaluation/Rejection of Proposals:**

Prior to completion of the evaluation process, an applicant may be asked to participate in an interview for the purpose of clarifying or expanding upon any information contained in this proposal.

**The Alliance for a Healthier Generation reserves the right to accept a proposal, all or in part and reject any and all proposals.**

The Alliance for a Healthier Generation is aware of the amount of time and effort it takes to prepare a response to a proposal. Your participation in this process is sincerely appreciated.



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### **8. CONTRACTING AND INVOICING**

#### Contracting

The contract template to be used is attached in Exhibit B. Please review and note in your response any requests for alterations to the proposed contract.

#### Payment Terms:

The anticipated contract amount will be no more than \$60,000.

#### Invoicing Terms:

Invoicing terms for the work mentioned in this RFP are as follows:

Contract Signing:	25%
Receipt of Report:	60%
30 days after Receipt of Report	15%

All work performed in the creation and development of the Competitive Foods Progress Report for this project will be work-for-hire, and the Alliance for a Healthier Generation will retain solely all rights to any content, materials, and messaging, processes or techniques developed as a result of this project. Contractor will grant the Alliance a license to use any copyright, processes or techniques to which it holds rights in the development. All contract terms and conditions are outlined in the attached Alliance Standard Agreement for Services.



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## APPENDICES



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## EXHIBIT A: Alliance for a Healthier Generation Guidelines for Competitive Foods Sold in Schools to Students

These guidelines apply to snacks, side items, treats, and desserts offered for sale as Competitive Foods in schools. All such Competitive Foods shall meet one of the following numbered criteria.

These foods include but are not limited to fruits, vegetables, yogurts (including drinkable yogurt and yogurt smoothies), puddings, soups, cheeses, snack chips (e.g., potato, tortilla, corn, veggie, etc.), pretzels, crackers, popcorn, nuts, seeds, french fries, dried meat snacks, granola bars, energy bars, breakfast bars, health bars, cookies, brownies, snack cakes, coffee cakes, pastries, doughnuts, danishes, candy, confectionery, chocolate, ice cream, frozen yogurt, sherbet, ice pops, frozen fruit bars, and other similar foods.

Items that would be considered to be entrées if sold in the reimbursable meal program, but are sold à la carte as Competitive Foods, are not subject to these Guidelines.

1. Any fruit with no added sweeteners and total fat listed as 0g on the Nutrition Facts Panel, or vegetables that are non-fried. Since fresh fruits and vegetables vary in size and calories naturally, they have no calorie limit. However, calories for packaged fruits and vegetables are easily ascertained according to package nutrition labeling. As such, calorie limits for these fruits and vegetables are specified as follows:

	<b>Elementary</b>	<b>Middle</b>	<b>High</b>
Fresh	no limit	no limit	No limit
Packaged in own juice	150	180	200
Dried	150	180	200

2. Any reduced-fat or part-skim cheese ≤1.5 oz.
3. Any one egg with no added fat or equal amount of egg equivalent with no added fat.
4. Any other food that meets all of the following criteria:
  - a. ≤35% of total calories from fat
    - i. Nuts, nut butters, and seeds are exempt from above limitation and are permitted.
    - ii. Fruit and nut combination products described in Addendum 1 are exempt from the above limitation.
  - b. ≤10% of calories from saturated fat –OR– ≤1g saturated fat
    - i. Nuts, nut butters, and seeds are exempt from above limitation and are permitted.
  - c. 0 g trans fat
  - d. ≤35% sugar by weight
  - e. ≤230 mg sodium
    - i. Lowfat and fat-free dairy products can have ≤480mg sodium
    - ii. Vegetables with sauce, and soups can have ≤480mg sodium if they contain one or more of the following: ≥2g fiber; or ≥5g protein; or ≥10% DV of Vitamin A, C, E, folate, calcium, magnesium, potassium, or iron; or ≥½ serving (¼ cup) of fruit or vegetables.
  - f. If products are dairy, they must be non-fat or low fat dairy.
  - g. Meet 1 of the following calorie requirements:
    - i. ≤100 calories
    - ii. Vegetables with sauce and soups meeting 3.e above can have 150 calories if they contain two or more of the following: ≥2g fiber; or ≥5g protein; or ≥10% DV of Vitamin A, C, E, folate, calcium, magnesium, potassium, or iron; or ≥½ serving (¼ cup) of fruit or vegetables.



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- iii. Other foods can have calorie limits per below if they contain one or more of the following:  $\geq 2$ g fiber; or  $\geq 5$ g protein; or  $\geq 10\%$  DV of Vitamin A, C, E, folate, calcium, magnesium, potassium, or iron; or  $\geq \frac{1}{2}$  serving ( $\frac{1}{4}$  cup) of fruit or vegetables:
  - $\leq 150$  calories for elementary schools
  - $\leq 180$  calories for middle school
  - $\leq 200$  calories for high school.

For individual serving packages, these nutritional Guidelines are defined for a whole package as labeled on the package's Nutrition Facts panel. In the event that the food is bought in bulk but served individually, such as on an à la carte line, then the criteria apply to the label serving.

### **Time of Day**

These Guidelines shall apply to items sold on school grounds or at school activities during the regular and extended school day when events are primarily under the control of the school or third parties on behalf of the school. The extended school day is defined as the time before or after the official school day that includes activities such as clubs, yearbook, band and choir practice, student government, drama, sports practices, intramural sports, and childcare / latchkey programs. These Guidelines shall also apply to food supplied by schools during official transportation to and from school and school sponsored activities, including but not limited to field trips and interscholastic sporting events where the school is the visiting team except as specified herein.

These Guidelines do not apply to school sponsored or school related bona fide fundraising activities that take place off of school grounds and not in transit to and from school. Nor do they apply to booster sales at school related events where parents and other adults are a significant part of an audience or are selling food as boosters either during intermission or immediately before or after such events. These school related events frequently occur during evenings and weekends. Examples of these events include but are not limited to interscholastic sporting events, school plays, and band concerts.

### **Addendum 1 – Dried Fruit and Nut Combination Products**

Dried fruit and nut products (commonly known as trail mix) are compliant with these guidelines if they meet the following requirements:

- The items found in the combination product include only dried fruit, and nuts and/or seeds.
- The product contains no added sweeteners.
- The combination product is exempt from the  $\leq 35\%$  of total calories from fat requirement, but must meet all requirements around calories, saturated fat, trans fat, sodium, sugar by weight, and positive nutrients.



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CONSULTANT AGREEMENT

This Consultant Agreement is made between the parties forming the Alliance For a Healthier Generation ("Alliance"), a joint initiative between the American Heart Association ("AHA") and the William J. Clinton Foundation ("Foundation") (the AHA and the Foundation, as the founders of the Alliance, are referred to herein jointly as "Client"), and \_\_\_\_\_ (hereinafter, "Provider"), whose principal offices are located at: \_\_\_\_\_. In consideration of the mutual promises set forth herein, it is agreed by and between Client and Provider that:

1. Services & Deliverables:

This Consultant Agreement shall govern the provision of all services by Provider to Client as described in Attachment A attached to and incorporated in this Agreement by this reference. This Consultant Agreement shall hereinafter be referred to as the "Agreement".

2. Payment & Completion Date:

For the services and deliverables provided under this Agreement, AHA, on behalf of the Alliance, will pay Provider the total sum as set out in Attachment B, which is attached to and incorporated in this Agreement by this reference. Payment in excess of this amount may only be made with the prior written consent of the Client. Unless otherwise provided in Attachment B, payment shall be made as follows: twenty-five percent (25%) of the total fee within thirty (30) days from the date(s) both parties sign this Agreement, sixty percent (60%) after receipt of the report, and the remaining amount of the total fee upon Provider's satisfactory completion and delivery of the services and deliverables as set forth in Attachment A and Client's final written acceptance thereof. Further, and except as may be otherwise provided on Attachment B, for work provided based on an hourly rate, Provider agrees that such sum(s) shall be paid according to the schedule set out Attachment B, and shall be paid on a monthly basis within thirty days following AHA's receipt of a detailed invoice for all services and deliverables provided thereunder.

3. Term

The effective date of this Agreement is \_\_\_\_\_ ("Effective Date"). It shall continue in effect until \_\_\_\_\_, unless earlier terminated under other provisions herein. Upon written consent of the parties, the Agreement may be extended for one additional one-year term.

This Agreement, including the attached Terms and Conditions, contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. In the event of any conflict between this Agreement and any attachments, the terms of the Agreement shall prevail.

AMERICAN HEART ASSOCIATION, INC. \_\_\_\_\_ [type name of Provider]

By: \_\_\_\_\_ By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

WILLIAM J. CLINTON FOUNDATION

ALLIANCE FOR A HEALTHIER GENERATION

By: \_\_\_\_\_ By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_



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### TERMS AND CONDITIONS

### Agreement PAGE TWO

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#### 4. Project Management and Reports:

(a) Provider is responsible for, and will personally direct the performance of, all services covered by this Agreement. Provider will use qualified and experienced employees and contractors to provide the services and deliverables under this Agreement. Provider shall cause any contractors it uses in connection with this Agreement to be bound by the same terms and conditions of this Agreement, including but not limited to, Sections 7. and 10. herein.

(b) Provider will produce any deliverable (if applicable) described in Attachment A by the stated deadline(s). Provider's failure to provide the services or deliverables described in this Agreement according to the deadlines and standards stated in the Attachment A will constitute a breach of this Agreement.

(c) Provider must furnish, at its own expense, all labor, materials, equipment, and other items necessary for this Agreement.

(d) All services and deliverables under this Agreement must be performed to the complete satisfaction of Client. Provider must provide Client with periodic progress reports as requested by Client and grant access to a Client representative(s) during regular business hours to inspect the quality or progress of Provider's services. At all times, Provider will grant these AHA representative(s) reasonable access to all books, records, correspondence, instructions, receipts, vouchers and memoranda relating to the contracted services, that are in the possession or custody of the Provider.

**5. Relationship of Parties:** This Agreement creates an independent contractor relationship between Client and Provider. Provider, including but not limited to a Provider employee, is not an employee of Client, and is not entitled to any of the benefits provided by Client to its employees, including but not limited to, group insurance or pension plan. Provider must not represent itself as an employee, agent, or representative of Client. Provider may not incur any obligations for Client not specifically authorized in this Agreement. The AHA may retain others to perform the same or similar services that Provider performs in this Agreement.

#### 6. Ownership of Intellectual Property:

This section shall apply to any copyrighted or copyrightable material (including, but not limited to, writings, drawings, photographs, video, reports or

audio works or electronic works) (hereinafter "Deliverables") that may be created or provided by Provider in performance of this Agreement.

(a) Provider agrees any copyrighted materials, trademarks, servicemarks, or other intellectual property owned or acquired by Client prior to the performance of Services under this Agreement ("Client Intellectual Property") are, and shall remain, the sole and exclusive property of the Client. Provider shall not have or acquire any right, claim, title or interest in or to any of Client Intellectual Property, except in reference to the parties' work as set forth in this Agreement, and in such form and manner as may be approved with the prior written consent of the Client in each instance of use. Any and all requests for use of the Client Intellectual Property, expressly including images or quotes of President Clinton, client lists, brochures, news releases or any public statement shall be submitted to the owner thereof and will require the written approval of said owner prior to any such use.

(b) Anything to the contrary notwithstanding, all methodologies, procedures, management tools, workshops, manuals, software, data files, concepts, ideas, inventions, know-how and other intellectual property Provider has developed, created or acquired prior to the performance of the Services, excluding the Deliverables prepared for Client under this Agreement and any Client Intellectual Property ("Provider's Intellectual Property") are, and shall remain, the sole and exclusive property of Provider. Client shall not have or acquire any right, claim, title or interest in or to any of Provider's Intellectual Property.

(c) To the fullest extent allowed by law, and subject to the limitation set forth in Section 7. (b), the Deliverables shall be considered "work-for-hire" prepared specifically for Client by Provider, and Client shall be sole owner of the content or data created, collected or maintained by Provider through its provision of Services to Client with all rights of use and copyright. To the extent Deliverables are not, by law, capable of characterization as "work-for-hire," Provider hereby assigns to Client all right, title and interest in the copyrights to Deliverables and agrees to assign and transfer said rights and interests to Client and to permit the recordation of such assignments and transfers.

(d) The Deliverables, their component parts, and all materials developed in their production, including copyright, shall be owned by the Client, and may not be used or reproduced by anyone without the

Client's written approval, except for use by Provider as representative work for presentation to prospective clients to obtain future employment. The Client does not permit individual credit in its publications for authorship or design. In lieu of such credit, and upon request, the Client will furnish Provider with a letter documenting, in sufficient detail, the work performed under this Agreement.

(e) Provider warrants that the Deliverables shall be Provider's original and unpublished work, or, if applicable, that Provider owns all right, title and interest in the Deliverables and that it has the sole and exclusive right to dispose of the Deliverables and grant the rights granted in this Agreement. Further, Provider warrants that the Deliverables contain no defamatory or unlawful matter and do not infringe on the copyright or violate the proprietary rights of any person. Provider agrees to indemnify, defend and hold the Client harmless from any suit, demand, or claim made against the Client by reason of any defamatory or unlawful matter or the infringement of any copyright or other proprietary rights, and Provider further agrees to pay any judgment or reasonable settlement offer resulting from any such suit, demand, or claim, and to pay any reasonable attorneys' fees incurred by the Client in defending against such suit, demand or claim.

(f) Client reserves the right, at its own expense and election, to register its copyright on the Deliverables in the United States of America, and in such other countries as it shall deem proper.

#### 7. Warranty & Liability:

(a) Provider warrants that the services and deliverables described in this Agreement conform to the requirements and criteria as detailed in this Agreement, and that the services and deliverables are free from defects in material, design, and workmanship and meet industry standards.

(b) Provider assumes total responsibility for all loss of, and damage to, its equipment or materials used or held for use in connection with the services performed during the term of this Agreement. For the duration of this Agreement, Provider must carry liability insurance as set forth on Attachment A-1, as well as all necessary workers compensation insurance, to fully protect both parties from any and all claims for damages, injury or death arising from the performance of this Agreement. Such insurance must be primary and non-contributory. Provider must provide AHA with evidence of such insurance prior to beginning work.

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(c) Provider agrees to indemnify and defend Client against any and all liabilities, losses, damages, suits, claims, demands, costs and expenses, including but not limited to reasonable attorney's fees, which arise or result in any way from the Provider's performance of this Agreement. **THE INDEMNITY SET FORTH ABOVE APPLIES NOTWITHSTANDING ANY ALLEGED OR PROVEN NEGLIGENCE ON THE AHA'S PART.** For the purposes of this paragraph, the parties indemnified and insured include Client, its officers, directors, members, agents and employees.

(d) The AHA shall give Provider prompt written notice of any liabilities, losses, damages, suits, claims or demands (hereinafter "Claims") for which Client is entitled to indemnification hereunder. Provider shall assume defense of the Claims, and shall consult with Client about all aspects of the defense and keep Client apprised of any and all court proceedings, filed court papers, and/or settlement offers relating to the Claims. The AHA shall have the right to approve any settlement of the Claims providing for any relief other than the payment of money; and Client shall cooperate with and provide reasonable assistance to in defending against any Claims, at Provider's expense.

### 8. Confidentiality and Data Security:

(a) **Confidential Information:** The term "Confidential Information" is intended to include all non-public information of the Client. Except as otherwise directed by the Client, Provider agrees that, on behalf of itself, its officers, directors, employees and agents, that it will not, at any time during or after the term of this Agreement, disclose or allow to be disclosed any Confidential Information to any third party whatsoever, or permit any third party to examine and/or make copies of any reports, documents or non-public information prepared by it or that come into its possession or under its control by reason of this Agreement. Upon termination of this Agreement, Provider will deliver to the Client all Confidential Information and other documents, papers, and other matter, in print or electronic form, in Provider's possession or under its control that relate to Client or this Agreement.

(b) **User Data:** All information on participants in the Client programs and information provided by users of the Client Website will be considered as "User Data." All User Data shall be owned by the Client. Provider shall maintain User Data in a safe and secure location. Provider may not use User Data for any purpose other than performance under this Agreement. User Data shall be deemed Confidential Information of Client, in accordance with the terms of the Agreement. Upon termination of the Agreement, Provider shall deliver a full and up-to-date copy of the User Data to Client, and shall then delete the User Data from its records and certify the destruction to the Client within thirty days of termination of the Agreement. Provider agrees to gather such User Data as may be required by the Client, and shall do so in a manner that complies with the Client's Privacy Policy as that policy may be amended from time to time. Provider shall obtain all relevant and necessary consents for use and disclosure of the User Data in conformity with law and Client policy. Provider, when gathering and storing such User Data at Client's request, will abide

by all applicable laws, rules and regulations. Provider will notify the Client within twenty-four hours of any breach or possible breach of its systems that might result in the disclosure of User Data to third parties not authorized to receive or use such information. Provider will immediately take appropriate action to correct any deficiency in its security systems in order to prevent further disclosure of User Data. Provider will cooperate with the Client in sending notices to persons whose data may have been disclosed and will pay all cost associated with sending such notices or other remedial action that may be needed.

9. **Background Checks:** Provider agrees that any and all personnel it assigns to work on a Client site or that have access to any Client assets, shall have undergone criminal and U.S. Patriot Act background checks, and shall have been determined to be acceptable by Client prior to beginning any such assignments. Provider shall provide AHA with proof of such checks upon the receipt of a written request from AHA for such documentation.

### 10. Termination:

(a) **For Cause:** If either party defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) business days after receipt of written notice of such default within which to cure such default. If the defaulting party fails to cure the default within such period of time, then the other party shall have the right, without further notice, and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this Agreement, to terminate this Agreement. For the purposes hereof, the following actions shall constitute default of this Agreement:

1. Any failure to exist as a business entity, to maintain a business address, or to practice its profession for remuneration;
2. The making of any assignment for the benefit of creditors, becoming generally insolvent, or the filing by or against a party of a petition for bankruptcy or for corporate reorganization under any bankruptcy act or similar statute that is not vacated within thirty (30) days after its filing;
3. Any unauthorized disclosure by Provider to a third party of documents, material, or information belonging to the Client; and
4. Any breach of the terms of this Agreement.

(b) **General:** Either party may terminate this Agreement at any time by providing the other party with thirty (30) days notice of its intent to terminate. Upon termination, Provider shall cease all work in progress, provide the Client with all completed Deliverables, and invoice the Client for work completed through the termination date.

11. **Force Majeure:** No party shall be in default under this Agreement, if such results, whether directly or indirectly, from fire, explosion, strike, freight embargo, act of God, or of the public enemy, war, acts of war, terrorism, acts of terrorism, civil disturbance, act of any government, de jure or de facto, or agency or official thereof, labor shortage, transportation contingencies, unusually severe weather, default of manufacturer or a supplier, quarantine restrictions, epidemic, or catastrophe.

Whenever possible, any schedule or time for performance set out in this Agreement shall be extended as necessary to overcome the effects of such *force majeure*.

12. **Assignment:** This Agreement may not be assigned by either party without the prior written consent of the other party.

13. **Waiver:** A waiver by a party of any term, provision, or condition of this Agreement, whether by conduct or otherwise, is not a waiver of any other provision of the Agreement; and will not constitute a continuing waiver. A waiver is not binding unless put in writing by the party making the waiver.

14. **Modification:** This Agreement may not be amended except by a writing signed by authorized representatives of both parties. No amendment of any of these preprinted terms is binding upon Client unless approved in writing by Client's Legal Department as evidenced by the Legal Department stamp and attorney's initials.

15. **Parties Named:** This Agreement does not confer upon any person or entity, other than between the parties, any rights or remedies under this Agreement. This Agreement does not relieve or discharge any liability of the parties or any third party. No provision in this Agreement gives any person or entity any right of subrogation or action against Client.

16. **Severability:** Should a court declare any part, term, or provision of this Agreement invalid, void, or unenforceable, all remaining parts, terms, and provisions will remain in full force and effect.

17. **Applicable Law:** This Agreement is governed by the laws of the State of Texas regardless of its conflict of laws provisions. Venue for any action will be in Dallas County, Texas.

18. **Survival:** Sections 6 (Ownership of Intellectual Property), 7 (Warranty & Liability) and 8 (Confidentiality and Data Security) survive termination of this Agreement.

19. **Subject Headings:** The subject headings of this Agreement are included for the purposes of convenience and reference only, and will not be deemed to explain, modify, limit, amplify or aid in the meaning, construction or interpretation of any of the provisions of this Agreement.

20. **Counterparts:** This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



## Request for Proposal/Bid for Research & Evaluation Services

### ATTACHMENT A

#### 1. Description of Services and Deliverables:

Under this Agreement, Provider will design, administer and report the results of an evaluation of the implementation of the Competitive Foods Agreement.

#### Deliverables

- a. Evaluation design
- b. Implementation Plan
- c. Data sets from schools and companies in SPSS format.
- d. A comprehensive report addressing all areas specified in the RFP, as well as other noteworthy findings.

#### 2. Timing:

December 2009	Data collection methodology presented and agreed upon
January/February 2010	Data collection process starts
March 2010	Raw data presented to the Alliance
May 2010	Report presented to the Alliance



## Request for Proposal/Bid for Research & Evaluation Services

### Attachment A-1 Insurance

For the duration of this Agreement PROVIDER shall carry insurance coverage as set forth below, and shall provide the CLIENT with a certificate of insurance evidencing such coverage, and designating the CLIENT (i.e., the American Heart Association and the William J. Clinton Foundation) as additional insured parties on such policies:

- Commercial General Liability insurance written on an occurrence form, including blanket contractual liability coverage against claims for bodily injury, death, and property damage, affording minimum single limit protection of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, with respect to bodily injury or death and property damage;
- Automobile Liability insurance against claims for bodily injury, death and property damage, affording minimum single limit protection of One Million Dollars (\$1,000,000) resulting from one occurrence;
- Workers Compensation and Employer's Liability insurance in accordance with the statutory requirements;
- Umbrella Liability insurance in the amount of Five Million Dollars (\$5,000,000) with respect to bodily injury or property damage occurring or resulting from one occurrence; and
- Professional Liability insurance coverage for claims arising from errors and omissions out of the performance or non-performance of the professional services provided under this Agreement. The required limit of this insurance is Five Million Dollars (\$5,000,000).



# Request for Proposal/Bid for Research & Evaluation Services

## Attachment B

### Fees and Payments

In consideration of the services and deliverables provided by Provider, Client agrees to pay the following fees and expenses:

Fees: *Specify if based on hourly rates or project fee.*

The parties agree to the hourly rates for the Consultants, not to exceed the total amount of \$\_60,000\_, as set forth below:

Name	Hourly Fee
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OR

Client agrees to pay Provider the fee of \_\_\_\_ for the services and deliverables covered by this Agreement.

Expenses: Client shall reimburse Provider for reasonable and actual out-of-pocket expenses, including without limitation travel, lodging, and meals incurred in connection with this Agreement to the extent approved in advance by Client.

Payment: Payment of amounts due will be made by Client according to the following schedule: *(set forth agreed payment schedule)*

Invoices: *(if applicable)* Invoices shall include hourly rates and detailed descriptions of services for each hour charged per person.