**AGREEMENT FOR SERVICES BETWEEN**

 **[Food Generator Name] AND**

**[Recipient Name]**

This Agreement (“Agreement”) is made and entered into as of the date of last signature below (“Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Donor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Recipient”). Client and Donor are collectively referred to as “Party” or “Parties”.

WHEREAS, Donor wishes to provide its excess edible food (“Goods”) that would otherwise be disposed to Recipient; and

WHEREAS, Donor has a relationship with Abound Food Care, an organization that facilitates distribution and tracking of food donations; and

WHEREAS, Donor wishes to provide Recipient access to Goods through its relationship with Abound Food Care; and

WHEREAS, Recipient is an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities including, but not limited to: (A) A food bank as defined in Section 113783 of the Health and Safety Code; (B) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and, (C) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code; and

WHEREAS, Recipient wishes to receive Goods from Donor for distribution to the public without charge.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Donation**
	1. **Free Distribution**Donor hereby donates the Goods to Recipient. Recipient represents and warrants that (i) the Goods will be distributed for free to Recipient's clients, (ii) Recipient is a nonprofit organization that is operating for religious, charitable, or educational purposes and does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of Recipient, (iii) Recipient is knowledgeable of the standards to properly recondition donated food or grocery products, and (iv) Recipient is not providing anything of monetary value to Donor in consideration of the Goods.
	2. **Inspection**Recipient shall inspect the Goods to the best of its ability and determine if the Goods are fit for human consumption. If the Goods are found to be deficient, Recipient shall NOT distribute the Goods directly or indirectly to the public; Recipient will also notify Donor of the deficiency.
2. **Allowable Foods**
	1. **Foods Acceptable and/or Preferred**Foods accepted and/or preferred for Food Recovery under this Agreement are listed and described in Exhibit B.
	2. **Conditions for Refusal**Recipient reserves the right to refuse food at any time due to food safety concerns, improper storage, provision of items not agreed upon for Food Recovery, and/or food not currently needed by Recipient.

	Donor agrees to provide food that meets all food safety standards in accordance with Paragraph III of this Agreement and not knowingly or intentionally provide foods that do not meet these standards.

	Recipient may reject at point of pick up, any donation of Goods that cannot be distributed or used for human consumption.

	Rejection by Recipient of Goods provided will be done so in good faith.
	3. **Food Dumping

	DONOR WILL NOT KNOWINGLY PROVIDE GOODS UNFIT FOR HUMAN CONSUMPTION, FORCE FOOD RECOVERY AFTER RECIPIENT CAPACITY HAS BEEN REACHED, OR INTENTIONALLY DELIVER GOODS OUTSIDE OF THE COLLECTION WINDOW SPECIFIED BY THE RECIPIENT. DOING SO JEOPARDIZES LIABILITY AND BRAND PROTECTION AND MAY RESULT IN IMMEDIATE TERMINATION OF THIS AGREEMENT.**
3. **Food Safety Requirements and Protocols**Recipient will implement agreed upon food safety steps to ensure the proper handling, transportation, and distribution of Goods. Food safety guidelines and best practices will be implemented in accordance with the County’s Environmental Health Department guidelines and California Retail Food Code (Cal Code).

Both Recipient and Donor will maintain compliance with all federal, State, and local regulations for safe food handling and food safety recordkeeping requirements prior to and during transportation, storage, and handling.

When applicable, Donor shall at all times maintain all licenses and permits required by the State of California and any other governmental authorities, including, without limitation, local and municipal governmental authorities, to operate a food establishment in accordance with the services provided by Donor.

In the event of a food recall, Donor will notify Recipient of the specifics of the recall.

All food advisories, warnings, and recalls, including voluntary recalls, must be handled in compliance with all issued local, State, and federal instructions.

Donor shall follow food safety procedures identified in Cal Code and the FDA Food Code ensuring proper temperatures, storage and time controls are met.
4. **Transportation and Storage**
	1. **Transportation**Recipient agrees to collect Goods utilizing materials and processes to maintain food safety.  Recipient may use volunteers, staff, or hired drivers to collect and transport the Goods. The Donor also has an option to self-haul the Goods to Recipient.
	2. **Missed, Delayed, or Canceled Pick-Ups**In the event of a delayed collection or the need for multiple Recipient pick-ups, Donor will retain possession of the food and maintain safe storage and handling of the food until the delivery/collection can be rescheduled or find alternative solutions if the food cannot be delivered in a safe or timely manner.

	In the event that Donor does not have food available or there is a delay in the availability of the food on a previously scheduled pick-up day and time, Donor agrees to contact the Recipient as early as possible.

	Both Parties will notify each other of closures and holidays that may affect transportation.

	Multiple delays or missed pick-ups without immediate notification by the Recipient may be grounds for termination of this Agreement.

	In most cases, the Recipient will require at least 24 hours’ notice to complete the pickup of the food donation.
	3. **Equipment/Recovery Materials Protocols**All food recovery equipment, utensils, supplies and materials shall be maintained, stored, transported, or used in a manner that prevents contamination of the food.
5. **Documentation and Recordkeeping**In accordance with SB1383, Donor will maintain food donation records and a copy of this Agreement on site.

Recipient agrees to cooperate with Donor or designee for reporting to local, state, and federal agencies, as applicable.
6. **Entire Agreement**This Agreement contains the entire Agreement between the Parties to this Agreement with respect to the subject matter herein and supersedes all prior understandings, agreements, representations and warranties, if any, whether oral or written, expressed, or implied, with respect to said subject matter.
7. **Contacts**Donor and Recipient will each appoint and identify a staff member or staff members to serve as a primary contact(s) for notices and other communications including in-store communications between departments. The contact person(s) are identified in Exhibit A.
8. **Term**This Agreement shall continue in full force and effect until terminated by either Party. Either Party may terminate this Agreement, with or without cause, upon written notice to the other Party with 30-day notice to the other Party.
9. **Non-Performance**In the event of non-performance or substandard performance under the terms of this Agreement, the violating Party will cooperate with non-violating Party in addressing the problem.

In the event of repeated and verifiable violations and after all reasonable efforts to correct have been exhausted, each Party has the right to terminate this Agreement with 7-day notice to the other Party. The Donor, under the obligations of SB1383, is still required to participate in Edible Food Donation and should contact the Donor’s designated partner Food Recovery Service.
10. **Force Majeure**Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, or explosion.
11. **Confidentiality**Information gained under this Agreement can only be used to comply with applicable state and local laws and shall not be sold or shared in any manner by either Party without express approval of the other Party. Information may be shared if required by law or determination by a court of competent jurisdiction; in such case the Party required to share information shall notify the other Party prior to sharing of information.
12. **Use of Names and Trademarks**Neither Party shall use the name, nor any trademark of the other Party without express approval from that Party.
13. **Law and Jurisdiction**This Agreement shall be governed by and construed in accordance with the laws of the State of California and applicable federal law, including, without limitation, the Bill Emerson Good Samaritan Food Donation Act and the California Good Samaritan Food Donation Act. Both Donor and Recipient are familiar with the Good Samaritan laws referenced in this subsection that limit liability to gross negligence and intentional misconduct. Any dispute arising out of this Agreement shall be heard in a court of competent jurisdiction in Orange County, CA.

The undersigned hereby agree to the terms of this Agreement:

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

Name of Signatory

Title of Signatory

Recipient

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

Name of Signatory

Title of Signatory

Donor

**Exhibit A: Contact Information**

Primary Contact for Recipient: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Primary Contact for Donor:

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

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

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit B: Acceptable and Not Acceptable Food Donations**

Acceptable Food

|  |  |  |  |
| --- | --- | --- | --- |
|  | Non-Perishable | Perishable | Prepared |
| Food Type | Shelf Stable packaged foods | Dry foods, refrigerated foods, frozen foods, produce | Cold Prepared Foods, frozen Prepared Foods, baked goods, edible trimmings from preparation process |
| Examples of Food Items | Canned, boxed or packaged foods | Bread, produce, meat, bread, dairy, juice | Prepared meat, poultry entrees, pasta, pizza, vegetables, chilled foods, etc. |
| Packaging Requirements | Non-Perishable foods must be in unopened packaging that maintains the container integrity with no leaks, cracks, missing or incomplete labels, or other indicators that the contents have been compromised. | Perishable foods, excluding whole/unpackaged produce, must be in their original, sealed packaging to maintain the integrity of the contents; and shall be stored in temperature-controlled packaging, including a time/temperature log if applicable. | Prepared Foods must be contained in clean, sealable, and food safe containers; packaged separately to avoid cross contamination; and shall be stored in temperature-controlled packaging and include a time/temperature log, if applicable. |
| Label Requirements | Shelf stable and packaged foods should have all original and legible labels from the manufacturer. | Common name of the product; and place of business of the manufacturer, packer, or distributor; net quantity of the contents; ingredients listed in order of prominence, code date | The name and location of donor; production and/or recommended discard date |

Unacceptable Food

|  |  |  |  |
| --- | --- | --- | --- |
|   | Foods | Food Conditions | Conditional Acceptance |
|  | Expired Baby Food Products, homemade food items, Gas flushed greens, alcoholRusted, bulging cans, cans dented at the creaseProducts with visible spoilage, mold, putrid odorOpened containersItems exposed to consumer contactProducts exposed to environmental damage (e.g. fire) | Any items that are not fit for human consumption; items that do not meet Cal Code standards | Expired goods may be donated if the items are still fit for human consumption |