DONATION AGREEMENT

This AGREEMENT is made and entered into this _____ day of _____, _____,

between

Community Organisation Name: _____

Address: _____

Hereinafter referred to as the "Donee," and

Food Business Name: _____

Address: _____

Hereinafter referred to as the "Donor,"

WHEREAS, a donation is defined as the movement of *surplus fresh raw produce and nutritious prepared goods* from the Donor to the Donee for distribution to persons in need within the community at no cost; and

WHEREAS, the Donor is defined as a Private Company governed by the Companies Act, 61 of 1973; Close Corporation governed by the Close Corporations Act, 69 of 1984; or Co-operative governed by the Cooperatives Act, 14 of 2005 ; and

WHEREAS, The Donee is defined as a Voluntary Association (VA) governed by the Non-Profit Organisations Act, 71 of 1997; (not-for-profit) Company incorporated in terms of Section 21 of the Companies Act, 61 of 1973; or Trust governed by the Trust Property Control Act, 57 of 1988; and

Therefore, the parties hereto agree as follows:

I. TERMS

This AGREEMENT is effective upon execution and shall remain in effect indefinitely unless terminated earlier by the parties hereto. Either party may terminate this AGREEMENT by providing the other party with five (5) days' advance written notification including the reasons for termination. A copy of this termination notification (or *CC* in the case of electronic email) shall be provided to **FOOD 4 THOUGHT** for record-keeping purposes.

II. GENERAL

A. **FOOD 4 THOUGHT** prioritises community organisations that are registered not-for-profits and that work with food-insecure people as part of their primary activities.

B. **FOOD 4 THOUGHT's** relationship between Donors and Donees is purely intermediary and, as an organisation, is primarily concerned with facilitating the initial connection between the businesses and charities registered with the **FOOD 4 THOUGHT** platform. Thenceforth, the parties hereto are expected to fulfill the roles and responsibilities as outlined in this AGREEMENT.

C. **FOOD 4 THOUGHT** will intervene in situations where there is an obvious breach of the original AGREEMENT or where one party has expressed concern relating to other party's conduct.

D. The parties hereto are aware of the differences between '*Regularly Scheduled Collections*', whereby the Donor has a sufficient quantity of surplus food to donate to the Donee on a regular and pre-defined basis, be it daily, weekly, or monthly, and '*Ad Hoc Collections*', whereby donations from the Donor take place as and when a sufficient quantity of food is available from the Donor who will notify the Donee via SMS.

III. NUTRICIOUS FOOD RESCUE COMMITTEMENT

The parties hereto agree to food rescue and redistribution processes which ensure that only the most nutritious healthy food makes its way to the recipient's table. To this extent, **FOOD 4 THOUGHT** has included in APPENDIX A of this AGREEMENT a list of *approved food items* suitable for donations services.

IV. DUTIES OF THE DONOR

A. The Donor shall make available to the Donee at no cost and at times and places [1] mutually agreeable to the parties hereto *surplus fresh raw produce and/or nutritious prepared goods* produced during the Donor's normal business operations, for which the Donor has determined it has no further use, and will be used exclusively for the objectives or required activities of the Donee.

B. The Donor agrees that food, which has been served but remains unused or is returned by the consumer, shall *not* be offered as a donation for human consumption.

C. The allocated surplus food will have been kept within the South African food handling standards, as outlined in the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 [2] (as amended), at all stages of preparation up to the point of transfer to the Donee.

D. Any surplus food intended for donation will be packaged using clean and sanitary industry standard materials, as outlined in the Foodstuffs, Cosmetics and

[1] Although the availability of each party to dispatch/collect donations has been specified independently during the initial registration on the **FOOD 4 THOUGHT** website, the parties hereto, upon committing to this AGREEMENT, have the right to make changes to their availability in order to accommodate a mutually-compatible schedule for collections.

[2] See *Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food* (No. R. 962, Department of Health).

Disinfectants Act, 54 of 1972 [3] (as amended), covered and labelled with an expiration date.

E. The Donor agrees to store any donations of surplus food in a safe environment, and in accordance with the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 [4] (as amended), until such a time that the Donee is able to collect.

F. The Donor agrees to allocate, package and make accessible any donations for collection upon the Donee's arrival at the Donor's facilities so as to streamline the collection process and prevent any disruptions to the parties' normal working operations or schedules.

V. DUTIES OF THE DONEE

A. The Donee is responsible for collecting *surplus fresh raw produce and/or nutritious prepared goods* at times and places [5] mutually agreeable to the parties hereto, transport them as necessary, and provide them at no cost to people in need, all in a manner that complies with the applicable laws and regulations.

B. Where an 'Regularly Scheduled Collection' is concerned, the Donee agrees to notify the Donor via SMS in the event that the Donee cannot make use of or is unable to collect any donations made available by the Donor, so that the surplus food will be passed on to the next nearest charity and so on.

C. Where an 'Ad Hoc Collection' is concerned, the Donee agrees to respond to any SMS notifications received from the Donor, be it to ACCEPT or REJECT the offer, within a reasonable period of time.

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[3] See *Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food* (No. R. 962, Department of Health).

[4] See *Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food* (No. R. 962, Department of Health).

[5] Although the availability of each party to dispatch/collect donations has been specified independently during the initial registration on the **FOOD 4 THOUGHT** website, the parties hereto, upon committing to this AGREEMENT, have the right to make changes to their availability in order to accommodate a mutually-compatible schedule for collections.

D. The Donee shall be responsible for ensuring that food is transported to and from a facility within a period of less than 60 minutes; using a vehicle that has been cleaned to such an extent that chemical, physical or microbiological contamination of the food is prevented; without exposure to contaminated food or waste food, poison or any harmful substance, a live animal, or any object that may contaminate or spoil the food; and provided that the surface temperature thereof shall not exceed 25°C, in accordance with the standards and requirements for the transport of food as outlined in the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 [6] (as amended).

E. The Donee is responsible for identifying, isolating and preventing any potential health hazards associated with the surplus food upon receipt at the Donee's facilities, and before the food is utilised in any way. In accordance with the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 [7], a "health hazard" includes any condition, act or omission that may contaminate or spoil food so that consumption of such food is likely to be dangerous or detrimental to health, and whereas, "contaminate" refers to the effect exerted by an external agent on food so that it does not meet a standard or requirement determined by any law; does not meet acceptable food hygiene standards or consumer norms; or is unfit for human consumption.

F. The Donee agrees to be vigilant about monitoring the expiration date of any donations received and is responsible for disposing any food which it deems to be unsound, which in reference to the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 [8], refers to food which is unwholesome, polluted, infected, contaminated, decayed or spoiled, or unfit for human consumption for any reason whatsoever.

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[6] See *Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food* (No. R. 962, Department of Health).
[7] See *Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food* (No. R. 962, Department of Health).
[8] See *Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food* (No. R. 962, Department of Health).

G. The Donee agrees to store any donations of perishable food received from the Donor in a safe environment until such a time that the food can be used. The Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 [9] (as amended) defines "perishable food" as any foodstuff which on account of its composition, ingredients, moisture content and/or pH value and of its lack of preservatives and suitable packaging is susceptible to an uninhibited increase in microbes thereon or therein if the foodstuff is kept within the temperature spectrum of 4°C to 65°C, and includes the perishable foodstuffs listed in Government Notice No. R.1183 of 1 June 1990, as amended, excluding fruit and vegetables.

H. The Donee agrees to accept responsibility for foodborn illnesses if donated food is mishandled after collection from the Donor.

I. Where the surplus food is passed on to a third party the initial recipient, who now takes on the role of the Donor, is responsible for ensuring the third party's compliance with this AGREEMENT.

VI. DONATION RECEIPT

A. The Donor and Donee have an equal responsibility for ensuring that every donation is accompanied by a *Donation Receipt*, as provided for by **FOOD 4 THOUGHT** to the parties hereto upon signing this AGREEMENT.

B. For the Donor, the *Donation Receipt* constitutes a mandatory requirement, according to Section 18 A of The Income Tax Act, 58 of 1962 (as amended), for tax-deduction purposes.

C. For the Donee, the *Donation Receipt* is required for reasons of traceability, internal systems for determining the origin of donated food.

[9] See *Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food* (No. R. 962, Department of Health).

VII. FINAL DISPOSAL & RECYCLING

A. This section highlights the need for understanding and agreement between the parties hereto regarding the appropriate procedures for recycling, re-using, storing and treating 'food waste'. In accordance with the National Environmental Management Waste Act, 59 of 2008 (as amended), 'Food Waste' is defined as surplus food which is not suitable for human consumption. Furthermore, we can differentiate between 'Business Waste', which is waste that emanates from the normal working operations of the Donor and is not included as part of any donations made to the Donee, and, 'Charity Waste', which represents the residual waste that remains after the Donee has extracted as much value as possible from any donations received from the Donor.

B. Where it is financially and practically feasible, the parties hereto are encouraged to divert surplus food from landfill disposal by:

1. **Transferring** food waste to a Waste Transfer Facility (Kraaifontein & Athlone) by applying for a VH Number and drop-off permit for each individual delivery. Limited to Tuesdays and Thursdays. Contact Monique Balie at the Solid Waste Disposal Permit Office via phone (021 487 2479) or email (monique.balie@capetown.gov.za).
2. **Re-use** food waste as animal feed for farmers, in accordance with the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 36 of 1947 (as amended).
3. **Recycling** food waste for industrial purposes, in accordance with the National Environmental Management Waste Act, 59 of 2008 (as amended).
4. **Treating** 'compostable organic waste' through a controlled biological process in which organic materials are broken down by micro-organisms (composting). According to the National Environmental Management Waste Act, 59 of 2008 (as amended) [10], 'compostable organic waste' means a carbon-based material of animal or plant origin that naturally enhances

[10] See *Draft National Norms and Standards for Organic Waste Composting* (Notice 68, Department of Environmental Affairs)

fertility of soil through a natural degradation process but excludes human made organic chemicals and naturally occurring organic chemicals which have been refined or concentrated by human activity. This excludes infectious, poisonous, health-care and hazardous organic wastes.

VIII. FOOD SAFETY GUIDELINES

A. In addition to the food safety guidelines already mentioned as part of the duties of the Donor and Donee, **FOOD 4 THOUGHT** has included, in APPENDIX A of this AGREEMENT, a set of *general guidelines* to assist the parties hereto with the implementation of the new programme. It is important to note that the information provided in this section, although derived from the relevant legislation and regulations, is merely a guideline and the parties hereto are encouraged to consider the full text [11] before making any material changes to their regular working operations.

IX. TAXATION

According to Section 18 A of The Income Tax Act, 58 of 1962 (as amended), the Donor may claim a deduction in taxes for donations made to the Donee, provided that the following requirements have been satisfied:

- The food items allocated for donation constitute trading stock which forms part of the business undertaking or trading activity conducted by the Donor.
- The Donee's primary activities are compliant with Section 30 and Part II of the Ninth Schedule to the Act.
- A claim for a deduction in respect of any donations made by the Donor to a Section 18 A approved organisation must be supported by a receipt issued by the Donee (*see section:* **V. DONATION RECEIPT**)
- The receipt issued by the Donee must include at least the following details:

[11] Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 (as amended)

- The reference number of the Donee issued to it by the Commissioner for purposes of Section 18 A.
- The date of the receipt of the donation.
- The name and address of the Donee issuing the receipt to which enquiries may be directed.
- The name and address of the Donor.
- The amount or nature of the donation if not in cash.
- Certification that the receipt is issued for the purpose of Section 18 A and that the donation will be used exclusively for the activities which are approved for Section 18 A purposes.

- The receipt must be issued in the year when the donation is received by the Donee approved for purposes of Section 18 A.
- The amount that may be claimed as a deduction by the Donor does not exceed 10% of the taxable income (excluding any retirement fund lump sum benefit) of the taxpayer, calculated before allowing any deduction under Section 18 A or any deduction for medical and dental expenses.
- The value of the donation must be determined in accordance with Section 18 A (3)(a)(ii) of the Act: *Where the property forms part of trading stock of the taxpayer, including livestock or fresh produce of farmers, the lower of the market value of the trading stock or the amount taken into account in respect of the trading stock.*

X. LIABILITY AND INDEMNIFICATION

The Donee hereby agrees to indemnify and hold harmless the Donor, and **FOOD 4 THOUGHT**, from any liability, loss, illness, injury, damage or claim of any kind to persons or property, whether caused by the Donor, its employees, or by third persons, arising from the nature, age, packaging, transport, condition or consumption of apparently wholesome *surplus fresh produce and/or nutritious prepared goods* received as donations, except to the extent caused by the gross negligence or willful misconduct of the Donor.

XI. INSURANCE

The Donor shall, at his, her, or its sole cost and expense, maintain in full force and effect, during the term of this AGREEMENT, an insurance coverage policy with a reputable licensed and/or admitted insurer, to cover any claims, damages, liabilities, costs and expenses (including legal counsel fees) arising out of or in connection with the Donee's fulfillment of any of its obligations under this AGREEMENT.

XII. DELIVERY DETAILS

The Donee shall take delivery at the following location(s):

Address 1: _____

Address 2: _____

Address 3: _____

Address 4: _____

Address 5: _____

XIII. NOTICES

Any and all notices or other communication between the Donor and Donee shall take place in writing (via letter, fax or electronic mail) and shall be deemed to have been duly given on the day of transmission if by electronic mail and by the third day after deposit in the South African Postal Service, if mailed to the party to whom notice is to be given.

XIV. ENTIRE AGREEMENT & AMENDMENTS

This AGREEMENT constitutes the entire agreement between the parties and supersedes any prior or contemporaneous written or oral understanding or agreement, and may be amended solely by notifying **FOOD 4 THOUGHT** who will serve as witness and facilitate the written amendment by both parties to this AGREEMENT.

ACCEPTED and AGREED:

Community Organisation (Donee) Name: _____

Reference #: _____ **PBO #:** _____

Address: _____

Phone: _____ **Fax:** _____

Email: _____

Food Business (Donor) Name: _____

Address: _____

Phone: _____ **Fax:** _____

Email: _____

Either party may change its address as indicated above by giving written notice of such change to the other party in the manner specified in this Section.

APPENDIX

APPENDIX A - APPROVED FOOD ITEMS FOR DONATIONS

FRESH FRUIT & VEG

- ACCEPTED: Whole fresh produce without significant decay; chopped fresh produce packed separately in food-grade packaging

BAKERY

- ACCEPTED: Bread, bagels, croissants and other baked goods not more than 24 hours old (unless frozen properly while still fresh)
- NOT ACCEPTED: Stale baked goods; cakes, pastries and other bakery items high in sugar

MEAT, POULTRY & FISH

- ACCEPTED: All types (fresh and frozen) assuming they have been properly sealed, transported and stored before use

PREPARED GOODS

- ACCEPTED: Sandwiches, stews, casseroles and other prepared goods chilled to 4°C and which have not been previously reheated, served to customers or put onto a buffet table
- NOT ACCEPTED: Returned, partially-consumed and incorrectly packaged/stored prepared food items; fast-food items and other prepared goods high in sugar

TINNED & BASIC GOODS

- ACCEPTED: Tinned or "wet" goods i.e. vegetables, legumes, fruit, meat and fish; Basic or "dry/pantry" goods i.e. legumes, beans, grains, soya mince, pasta, coffee, tea, salt, sugar, and spices (in their original packaging)
- NOT ACCEPTED: Tinned goods rich in sugar (e.g. baked beans in tomato sauce); any open, punctured, bulging or seriously damaged tinned or pantry goods; cooked grains (e.g. rice) are not accepted

DAIRY

- ACCEPTED: Unused milk, yogurt, eggs, cheese and other dairy items in their original packaging and stored at the appropriate temperature of 4°C before use

HOT

- *See above*

CHILLED

- *See above*

FROZEN

- ACCEPTED: Frozen vegetables, meat, poultry and fish stored in a freezer until needed

In addition, **FOOD 4 THOUGT** will not accept donations of any of the following items:

- Used cooking oils and other fats
- Food that is not from a regulated food provider
- Food that is at or past its 'use by' date
- Foods with damaged or compromised packaging, resulting in the loss of a sanitary barrier protection
- Foods that have been kept in the temperature danger zone for more than 2 hours
- Frozen foods with freezer burn
- Sushi or any seafood intended for raw consumption
- Any foods containing alcohol

APPENDIX B - GENERAL FOOD SAFETY & DONATION GUIDELINES

A. GENERAL FOOD SAFETY GUIDELINES

Preparing and Re-Processing Food

To avoid cross-contamination of any donations, remember to:

- Avoid touching your face or hair when working with foods.
- Avoid using the same knife, spoon, or tongs on different foods.
- Be sure to clean and sanitise cutting boards and counter space between tasks when working with different foods.
- Avoid reuse of disposable containers.
- Avoid storing washed and unwashed food together.
- Separate raw and cooked food items. Do not let juices from raw meat, poultry, or fish come into contact with other foods, surfaces, utensils, or serving plates.
- Wash hands thoroughly with soap and water before handling food or food utensils, and after handling raw meat, poultry, or fish.

Receiving and Storing Donated Food

Handling the receiving and storage of donated food properly can greatly help reduce the risk of foodborne illness.

- Make space in the refrigerator or freezer for the donated food.
- Consider using the "FIFO" (First In, First Out) method; rotate the food to be sure the most recently received food is to the back.
- Clean all surfaces that you will be using before the food arrives.
- Evaluate the food:
    - Is the food discolored? Is it moldy? Does it have a sour odor?
    - Does frozen food look as if it has been thawed and refrozen?
    - Has anything leaked onto the food from another container?
    - Is the food at the correct temperature?
    - Check the Best Before and Use By dates
- WHEN IN DOUBT, COMPOST IT OR THROW IT OUT!

B. GENERAL DONATION GUIDELINES

Fresh Fruit & Veg: Whole

Preferred Packaging:

Bag or cardboard box

Storage Conditions**:

Cool, dry area

Non-Acceptable Conditions***:

Significant decay

Fresh Fruit & Veg: Chopped

Preferred Packaging:

Bag each vegetable stored separately

Storage Conditions**:

Chilled, 4°C or less

Non-Acceptable Conditions***:

Color change or decay

Baked Goods: Fresh or day-old bread and other baked goods

Preferred Packaging:

Must use industry standard packaging/bags and be kept separate from other baked goods

Storage Conditions:**

Cool, dry area

Non-Acceptable Conditions*:**

Stale/hard

Baked Goods: Muffins, Pastries etc

Preferred Packaging:

Pack in own paper boxes, avoid crumbling

Storage Conditions:**

Cool, dry area

Non-Acceptable Conditions*:**

Stale/hard bread

Prepared Foods: General

Preferred Packaging:

Packaged separately, securely closed, avoid spillage

Storage Conditions:**

Chilled, 4°C or less, frozen, -18°C or less

Non-Acceptable Conditions*:**

Mixing food types e.g. meats and side dishes

Prepared Foods: Sandwiches

Preferred Packaging:

Wrapped in clear plastic, wrap or foil

Storage Conditions:**

Chilled, 4°C or less

Non-Acceptable Conditions*:**

Mixing food types e.g. meats and side dishes

Prepackaged Foods: Perishables

Preferred Packaging:

Packaged separately, securely closed

Storage Conditions**:

Chilled, 4°C or less

Non-Acceptable Conditions***:

Opened, punctured, bulging or damaged packaging

Prepackaged Foods: Non-perishable

Preferred Packaging:

Packaged separately, securely closed

Storage Conditions**:

Cool, dry area

Non-Acceptable Conditions***:

Opened, punctured, bulging or damaged packaging

Frozen: Vegetables, Meat, Poultry, Fish

Preferred Packaging:

Packaged separately, securely closed

Storage Conditions**:

Frozen, -18°C or less

Non-Acceptable Conditions***:

Defrosted or damaged packaging, severe freezer burn

Frozen: Meat, Poultry, Fish (Fresh)

Preferred Packaging:

Original packaging or clear plastic wrap

Storage Conditions**:

Refrigerated at all times, 4°C or less

Non-Acceptable Conditions***:

Strong odor, discoloration

Frozen: Dairy, Pastry items (factory-prepared)

Preferred Packaging:

Packaged separately, securely closed

Storage Conditions**:

Frozen, -18°C or less

Non-Acceptable Conditions***:

Defrosted, punctured, opened or damaged packaging, severe freezer burn

Frozen: Dairy items (cheese, yogurt etc)

Preferred Packaging:

Individually wrapped clear plastic wrap

Storage Conditions**:

Refrigerated at all times

Non-Acceptable Conditions***:

Damaged packaging

Frozen: Milk

Preferred Packaging:

Securely closed

Storage Conditions**:

Refrigerated at all times, 4°C or less

Non-Acceptable Conditions***:

Damaged packaging

Beverages: Perishable

Preferred Packaging:

Securely closed bag or cardboard box

Storage Conditions**:

Chilled, 4°C or less

Non-Acceptable Conditions***:

Alcohol not accepted

Beverages: Non-Perishable

Preferred Packaging:

Bag or cardboard box

Storage Conditions**:

Cool, dry, unopened

Non-Acceptable Conditions***:

Opened, punctured, bulging

** *Chilled perishable food should be below 4°C except during necessary times of preparation or while being held for service which may not exceed two hours.*

*** *We do not accept any products that contain alcohol.*