



ONWARD DONATION AGREEMENT

entered into by and between

FOODFORWARD SA NPC

Registration Number: NPO-025-709

(hereinafter referred to as “**FoodForward SA**”)

Herein represented by Mr A Du Plessis, duly authorised thereto in his capacity as the

Managing Director

and

NAME OF BENEFICIARY ORGANISATION

(Registration Number: _____)

(Hereinafter referred to as “The BO”)

(collectively, the “**Parties**”)

1 **RECORDAL**

- 1.1 FoodForward SA is a registered non-profit organisation that sources, collects, sorts, and distributes edible surplus food (and non-food groceries) to verified NPOs ("**Onward Donation**"), for the benefit of hunger relief to vulnerable communities across South Africa.
- 1.2 The BO is an organisation that wishes to receive donated surplus food from FoodForward SA and has complied with FoodForward's application process in this regard and is accordingly eligible to receive Onward Donations.
- 1.3 The Parties wish to record their agreement in writing.

2 **DEFINITIONS**

- 2.1 Headings in this Agreement are only for convenience and shall not affect its construction.
- 2.2 Unless a contrary intention appears, words denoting a singular shall include the plural and vice versa. Words denoting one gender shall include reference to the other gender, and natural persons shall include created entities (corporate or unincorporated) and the state and vice versa.
- 2.3 "Agreement" means this agreement and any annexures attached hereto from time to time, provided it is signed by both Parties; and
- 2.4 "Product" means FoodForward SA's donated food product.

3 **INTENDED BENEFICIARIES**

- 3.1 The intended beneficiaries of the Product are Beneficiary Organisations (BO) (and the beneficiaries they serve), that have been assessed, verified, and approved in writing by FoodForward SA, and form part of its BO membership database.
- 3.2 FoodForward SA may from time to time revise its BO database, to ensure that BOs continue to meet FoodForward SA's criteria, to add or remove BOs as and when required, in each case in its sole discretion, and with reasonable notice to BOs.

4 **DURATION OF THE MOU**

- 4.1 This MOU will come into full force and effect on the date of signature hereof by the Party last signing in time and will remain in force until the annual renewal of membership takes place

("Initial Term"), or it will be automatically renewed for successive periods of 1 (one) year each ("Renewal Period") unless terminated by either Party on 30 days' prior written notice.

- 4.2 The Parties agree that on the expiry of the Initial Term, FoodForward SA shall automatically cease to be a Party to this MOU, unless it decides to renew the BO agreement, at the time of its annual review period.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

5 RESPONSIBILITIES OF THE BENEFICIARY ORGANISATION:

- 5.1 In terms of section 55 of the Consumer Protection Act, Act 68 of 2008 (hereinafter referred to as "the Act") the BO is hereby informed that the products donated are offered in a specific condition which may include but is not limited to food and/or any products donated that

might be damaged, contain food which is expired (While FoodForward does not distribute groceries that are past their expiry date, such grocery items may be accidentally included during the sorting process), and/or;

- 5.1.1 might have the incorrect labelling.

The BO hereby expressly agrees to accept donated goods in the above mentioned condition(s).

- 5.2 The BO hereby indemnifies and holds FoodForward SA and its donors, partners, supporters, sponsors etc. harmless against any and all liabilities, damages, illnesses, costs and expenses incurred or imposed upon FoodForward SA as a result of or arising out of any materially defective products being returned by the BO. The BO acknowledges and agrees that FoodForward obtains the Products from third party donors and is not in control of the quality of the supply chain from the manufacturer to the donor.

- 5.3 The BO undertakes to obtain a Certificate of Acceptability from its local authority, as per the requirements of the local authority.

- 5.4 To the extent that this Indemnity amounts to an amendment or variation of the terms and conditions of an existing agreement, the Parties hereby agree to such amendment and confirm that it constitutes an amendment which satisfies the requirements of this Agreement.

- 5.5 This indemnity will survive any expiration or termination, for whatsoever reason, of this Agreement and for as long as there may be any potential claims against FoodForward or

involving under the Consumer Protection Act in relation to the Onward Donations from FoodForward.

- 5.6 Adhere to all of FoodForward SA's criteria, guidelines, policies, and procedures at all times.
- 5.7 Pay the required monthly membership/administration fee by the end of each month, prior to receiving Onward Donations for the new month.
- 5.8 Keep a FoodForward SA file, for the recording and storing of all communication relating to the relationship, including collection documents, letters etc.
- 5.9 Bear responsibility for the collection, distribution, and administration of the Onward Donation, at its own cost.
- 5.10 At the time of the Onward Donation, have a duly authorised person to sign FoodForward's distribution sheet, as having received the quantity, product type and time of the Onward Donation.
- 5.11 Keep an updated and detailed list of all ultimate recipients of the Onward Donation that are assisted.
- 5.12 Ensure, by means of an unannounced on-site assessment, that the intended ultimate recipients are legitimate and deserving of support.
- 5.13 Ensure that Onward Donation is not donated to third party organisations without the written consent of FoodForward.
- 5.14 Ensure that Onward Donations are transported in clean and suitable vehicles, properly configured for the safe and hygienic transportation of food.
- 5.15 Ensure that vehicles that are collecting Onward Donations from FoodForward are subject to a thorough hygienic cleaning regime.
- 5.16 Not sell any product donated by FoodForward, under any circumstances, at any time.
- 5.17 Not claim to have acquired or have ownership of the trademarks or other intellectual property in relation to the Onward Donation arising out of the delivery to it thereof or any other circumstances whatsoever.

- 5.18 Not use any of the Onward Donation's trademarks, including its name and logo, in any publication or on any stationery or vehicle used by it, unless specifically agreed to by FoodForward in writing.
- 5.19 Provide feedback to FoodForward in writing, if it is not satisfied with the service delivery, quality of Onward Donations, communication, or other matter of concern, relating to the relationship.
- 5.20 Allow FoodForward SA access to all records, properties, processes and systems for the purposes of auditing compliance with this Agreement.
- 5.21 Refrain from making any negative public statements about FoodForward SA, whether verbally or in writing, which may discredit, defame, or depict FoodForward SA in a negative manner.
- 5.22 Attend ALL meetings when required to do so.
- 5.23 Provide volunteers from time to time to assist in the warehouse, and for FoodForward SA's annual Mandela Day Food Drive, when needed.

6 OBLIGATIONS OF FOODFORWARD SA
FOODFORWARD SA AGREES TO:

- 6.1 Provide the Onward Donations as and when same becomes available, and shall have no obligation to guarantee availability of Onward Donations, or specific types of Onward Donations.
- 6.2 Edible Onward Donations which are fit for human consumption, as well as non-food groceries when it becomes available.
- 6.3 Take reasonable steps to ensure the safety of the product.
- 6.4 Accept the BOs rejection of any product which it may deem not suitable.
- 6.5 Respect any ceiling stipulated by the BO with regard to its capacity to accept Onward Donations, and engage with the BO regarding the re-distribution of any Onward Donations in excess of such a ceiling.
- 6.6 Provide such information to the BO, on request, with regard to the product, its expiry date, its shelf life, its safety and so on, as it is reasonably capable of providing.

- 6.7 Communicate with the BO in regards to any product recall notification it may receive from suppliers with regard to specific products.

7 TERMINATION

- 7.1 Either Party may terminate this Agreement forthwith by notice in writing if the other party is in breach of this Agreement and shall have failed to remedy the breach within two (2) weeks of receipt of a request in writing from the party not in breach to remedy the breach, such request indicating that failure to remedy the breach may result in termination of this Agreement.
- 7.2 Termination of this Agreement howsoever arising will be without prejudice to the rights and duties of the Parties arising in any way out of this Agreement prior to termination and without limitation all the clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

8 GENERAL

- 8.1 Each of the Parties hereto is an independent contractor and nothing contained in this Agreement will be construed to imply that there is any relationship between the Parties of partnership or agency or employment, nor are the Parties engaged in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise, unless expressly permitted by the terms of this Agreement.
- 8.2 Failure to exercise or delay in exercising on the part of either party any right, power or privilege of that party under this Agreement shall not in any circumstances operate as a waiver thereof nor prejudice either party's rights to take subsequent action.
- 8.3 This Agreement sets forth the entire agreement between the Parties with respect to the subject matters herein and supersedes and replaces all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the Parties.
- 8.4 This Agreement will be binding upon and shall inure to the benefit of the parties' successors.
- 8.5 No variation to or consensual cancellation of this Agreement will be effective unless in writing and signed by or for both of the parties.

9 NOTICES AND DOMICILIA

- 9.1 a) The parties hereby choose their respective addresses of legal service in order for all purposes under this Agreement at the following addresses:

FoodForward South Africa: Corner of Viking Way and Odin Drive, Thor Gardens, Thornton, 7460

Name of BO: Physical Address

- 9.2 Any notice to any party shall be addressed to it at its *domicilium* aforesaid and sent by prepaid registered post, delivered by hand or transmitted by facsimile.
- 9.3 Any notice sent by prepaid registered post, shall be deemed to have been received, unless the contrary is proved, on the third business day after posting;
- 9.4 Any notice delivered by hand, shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided that such date is a business day, or otherwise on the next following business day.
- 9.5 Any notice by facsimile shall be deemed to have been received, unless the contrary is proved, one (1) hour after the time of transmission, provided the day of transmission is a business day, or otherwise on the next following business day.
- 9.6 Any party shall be entitled, by notice in writing to the other, to change its *domicilium* to any other address within the Republic of South Africa, provided that the change shall become effective only seven (7) calendar days after service of the notice in question.

10 DISPUTE RESOLUTION

- 10.1 In the event of any dispute in relation to or arising out of this Agreement, the Parties will as soon as practicable meet to try and reach an amicable resolution. If a resolution is reached, it is to be reduced to writing, and signed by both Parties, whereafter the dispute will have been settled. If a resolution is not reached, then the parties are to mediate as soon as practicable, the mediator being jointly agreed and appointed by the Parties, alternatively, if the Parties cannot agree on a mediator, then the mediator shall be appointed by the President of the Law Society of South Africa. If a resolution is reached in the mediation, it is to be reduced to writing, and signed by both Parties, whereafter the dispute will have been settled.

10.2 Should the Parties be unable to resolve the dispute by meeting or mediation (as outlined above), or should any one or both of the Parties refuse or fail to meet or mediate (as outlined above), the matter must then be resolved by way of arbitration, which may be initiated by either Party. The arbitration will take place in accordance with the provisions of the Arbitration Act 42 of 1965 (as amended). The decision of the arbitrator shall be the final and binding, with no right of appeal. If the Parties cannot agree upon an arbitrator, the arbitrator shall be appointed by the President of the Law Society of South Africa. The arbitration will be subject to the law of South Africa, will be in English and will take place at a mutually agreed venue in Cape Town.

10.3 The costs of mediation shall be borne by the Parties in equal shares. The costs of the arbitrator and the arbitration venue shall in the first instance be borne by the Parties in equal shares, save that the arbitrator shall have the power to make a costs award at the end of the arbitration, which shall then ultimately determine whether any party bears the costs of the arbitration and on what scale.

SIGNED at _____ on _____

AS WITNESSES:

1. _____ 2. _____

For and on behalf of FoodForward SA DESIGNATION: _____

SIGNED at _____ on _____

AS WITNESSES:

1. _____ 2. _____

For and on behalf of XXXXX DESIGNATION: _____