



Partner Food Bank Agreement

[name of food bank]
[city and state]
[EIN / Member ID]

Effective March 1, 2023

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This Agreement includes a number of appendices. Appendices set out substantive contractual requirements and other terms; they are fully part of this Agreement. A party’s entry into and signature of this Agreement constitutes agreement to the entire contract including all appendices. Separate appendices are typically used in cases where: (a) operating requirements are applicable not only to Partner Food Banks but also to other members or to FANO or (b) the content includes technical or other detail most relevant to specific functions or activities. The use of appendices is intended to help Partner Food Bank and FANO staff easily find relevant information.

* * * * *

Partner Food Bank Agreement

This is a Partner Food Bank Agreement (“Agreement”) dated as of March 1, 2023, between _____, a _____ nonprofit corporation (“Partner Food Bank”), and Feeding America, an Arizona nonprofit corporation (“FANO”).

Background

The members of the Feeding America network (“Network”) are unified by a common vision of an America where no one is hungry. The Network operates under a Network Charter, dated as of March 1, 2023, signed by all members of the Network (“members”). As contemplated by the Network Charter, members are parties to Operational Agreements with FANO or other members of the Network. This Agreement is the Operational Agreement for Partner Food Banks. It sets out requirements that are applicable to FANO and to all Partner Food Banks. Capitalized terms used in this Agreement and not otherwise defined have the meanings given them in the Glossary accompanying this Agreement.

FANO and Partner Food Bank agree as follows:

1. Network Charter and Term

1.1 Network Charter

FANO and Partner Food Bank will carry out their relationship, including their activities under this Agreement, in a manner guided by the Network Charter.

1.2 Term

This Agreement will remain in effect during the period beginning on March 1, 2023 and ending on February 28, 2033 (“Term”). Section 15 sets out a process for extension or tender of a new agreement to Partner Food Bank upon expiration of the Term. Section 20 addresses early termination of this Agreement.

1.3 National Council

The National Council reviews certain decisions, requests, and policy matters arising under this Agreement. For convenience, such matters, together with other information about National Council role and structure, are described in **Appendix N**.

2. Service Areas

2.1 Designated Service Area

Partner Food Banks will locate their facilities, distribute food and other product (collectively, “Product”), solicit in-kind goods and services, conduct fundraising activities, and engage in media outreach and external communications, in designated geographic areas (“Service Areas”). Partner Food Bank’s Service Area is set out in **Appendix A**.

2.2 Exclusivity

Partner Food Banks have exclusive rights of service and local resource development within their respective Service Areas except as provided in this Section 2.

2.3 Activities in Another Service Area

A Partner Food Bank may not conduct activities in another Partner Food Bank’s Service Area unless:

- a) such activity is expressly permitted under **Appendix C** (product sourcing and sharing), **Appendix H** (disaster services), or **Appendix J** (fundraising) and carried out in accordance with those provisions

- b) the Partner Food Bank is soliciting and procuring Product transportation
- c) the Partner Food Bank obtains prior written consent from the relevant Partner Food Bank, it being understood that the consenting Partner Food Bank may revoke such consent at any time by providing notice to the other Partner Food Bank

Partner Food Banks are expected to be respectful of Service Area boundaries, to use good judgment and common sense, and to communicate with neighboring Partner Food Banks and appropriate FANO staff if there is a question about the permissibility of an activity under this Section 2.

2.4 Reassignment of Service Area Portion

A Partner Food Bank may request that FANO reassign a portion of such Partner Food Bank's Service Area to another Partner Food Bank and thus expand the boundaries of the other Partner Food Bank's Service Area. Any such reassignment requires: (a) agreement by the two Partner Food Banks providing for such reassignment; (b) FANO's approval of the reassignment; (c) entry by the Partner Food Banks into a written agreement confirming such reassignment; (d) delivery to FANO of a copy of such agreement; and (e) creation and execution of a revised **Appendix A** for each Partner Food Bank to reflect the reassignment. Service Area reassignments cannot move forward without FANO's awareness and approval of the proposed change.

2.5 Shared Service Areas

Two or more Partner Food Banks may operate in a single geographical area with shared rights of service and resource development ("Shared Service Area") by entering into an agreement ("Local Agreement"). Such Local Agreement must address, at minimum, how the Partner Food Banks will:

- a) serve Product donors with the least disruption to service
- b) allocate any funds provided by FANO to the Shared Service Area
- c) divide the Goal Factor (as defined in Section 2.7) assigned to the Shared Service Area
- d) coordinate preparation of Service Area Assessments and Operational Response Plans as provided in **Appendix B**, preparation of Product Sourcing Plans as provided in **Appendix C**, and preparation of disaster plans as provided in **Appendix H**
- e) coordinate local advocacy efforts, media outreach, communication, and fundraising efforts as provided in **Appendix J**
- f) engage with and manage Distribution Partners (as defined in **Appendix E**) and partners such as schools, health care providers, and others
- g) operate direct service programs such as mobile pantries, summer meal programs for children, distribution of government commodities, and others
- h) coordinate Supplemental Nutrition Assistance Program ("SNAP") and benefit outreach if relevant
- i) orient the new CEO/Executive Director to Shared Service Area activities and the agreement in the event of a leadership transition at one Partner Food Bank
- j) seek to resolve conflicts internally through senior leadership discussions as contemplated by Section 16.2 of this Agreement

Partner Food Banks will provide a copy of the Local Agreement to FANO promptly upon completion and signature by the relevant Partner Food Banks, and in any case no later than 30 days after completion or after FANO so requests. For Shared Service Areas in effect as of the date of this Agreement, the relevant Partner Food Banks must enter into such Local Agreement no later than 1 year after the date of this Agreement. Partner Food Banks will also promptly provide FANO with any updates to their Local Agreement and will take all actions, if any, needed to update an existing Local Agreement in view of the requirements set out in this Agreement.

2.6 Split Counties

Two or more Partner Food Banks may split a county as set out in this Section 2.6. A split county is a county which the participating Partner Food Banks have through agreement: (a) divided by percentage as defined in the relevant Service Area appendices and (b) set boundaries based on zip codes assigned to each Partner Food Bank. The percentage split agreed upon by the Partner Food Banks will apply to FANO allocations of funds, calculations such as Goal Factor as contemplated by Section 2.7, measurements of service as contemplated by **Appendix B**, and other relevant cases. Such Partner Food Banks must have a current agreed-upon zip code division in writing and on file with FANO. Partner Food Banks will provide any agreed-upon updates to zip code divisions in writing to FANO promptly upon completion by the relevant Partner Food Banks, and in any case no later than 30 days after completion or after FANO so requests. FANO will update **Appendix A** for the relevant Partner Food Banks following such actions.

2.7 Goal Factor Treatment in Shared and Split Counties

For purposes of this Agreement, "Goal Factor" means the number of food insecure people in a Partner Food Bank's Service Area divided by the total number of food insecure people in the United States. Where applicable, the number of food insecure people in a Partner Food Bank's Service Area will account for the Goal Factor split/share percent. In such cases, the food insecure population in shared counties will be divided equally among the sharing Partner Food Banks, and the food insecure population in split counties will be divided according to the Goal Factor split percentage.

2.8 Service Areas and Zip Codes

Zip codes do not always conform to Service Area boundaries. In the case of inconsistencies between Service Area boundaries and assigned zip codes, Partner Food Banks are expected to be respectful of Service Area boundaries, to use good judgment and common sense, and to communicate with neighboring Partner Food Banks and FANO if there is a question about the permissibility of an activity.

2.9 Other Changes in Service Area

Changes in Service Areas or Service Area boundaries are subject to the following:

- a) Except as provided in this Section 2 or as result of accountability actions under Sections 17 – 20, a Partner Food Bank's Service Area may not be changed without the consent of the Partner Food Bank.
- b) Service Area boundaries are defined by FANO, and any change requires FANO's approval. Service Area boundaries may not be changed unilaterally by a Partner Food Bank or PSA, or through agreements or other coordinated decisions among Partner Food Banks, PSAs, or other members.
- c) In disputes relating to changes in physical Service Area boundaries (such as cases involving an open territory following loss by a Partner Food Bank of Network membership), Partner Food Banks will work to find a resolution in line with the Network Charter and, if needed, through the relationship management process set out in Section 16. If the relationship management process concludes without resolution of the dispute, the matter will not be taken to mediation or arbitration as contemplated by Section 16 but instead will be resolved by FANO.

3. Adequacy of Service

FANO and Partner Food Banks will carry out Service Area food insecurity and food access barrier assessment, and related operational planning, in accordance with **Appendix B**.

4. Product Sourcing and Sharing

FANO and Partner Food Banks will carry out food and other Product sourcing and sharing activities in accordance with **Appendix C**.

5. Product Handling, Distribution, and Organizational Matters

5.1 Product

Partner Food Banks will be responsible for Product handling in their Service Areas. In line with that responsibility, Partner Food Banks will maintain sufficient facilities and equipment for the safe and efficient handling of Product, and will operate in accordance with the requirements set out in **Appendix D**.

5.2 Distribution

Partner Food Banks will have responsibility for Product distribution in their Service Areas. In line with that responsibility, Partner Food Banks will operate in accordance with the requirements set out in **Appendix E**.

5.3 Affiliate Food Bank and RDO Integration

Partner Food Banks will be responsible for functional integration of Affiliate Food Banks and RDOs in their Service Area.

5.4 Structure

Partner Food Bank acknowledges that continuing Network membership requires Partner Food Bank to meet the requirements set out in **Appendix F** (collectively, "Eligibility Requirements"). Partner Food Bank represents, warrants, and confirms to FANO that Partner Food Bank satisfies the Eligibility Requirements.

5.5 Organization

Partner Food Banks will operate in accordance with the financial, corporate governance, and organizational requirements set out in **Appendix F**.

5.6 Fees

Partner Food Banks will pay an annual fee to FANO. The fee will be computed and payable as provided in **Appendix G**.

5.7 Network Standards

The requirements set out in this Section 5, together with the other obligations of Partner Food Banks set out in this Agreement, are referred to collectively as the "Network Standards."

6. Disaster Services

FANO and Partner Food Banks will carry out disaster service activities in accordance with **Appendix H**.

7. Information Sharing, Protection, and Disclosure

FANO and Partner Food Banks will carry out information sharing, protection, and disclosure activities in accordance with **Appendix I**.

8. Fundraising

FANO and Partner Food Banks will carry out fundraising activities in accordance with **Appendix J**.

9. Branding and Trademark Use

FANO and Partner Food Banks will license trademarks to one another, and use and protect such trademarks, as provided in **Appendix K**.

10. Network Standards Reviews

10.1 Periodic Reviews

FANO will conduct periodic reviews of Partner Food Bank operations, facilities, and organization for adherence to the Network Standards. FANO will:

- a) conduct such Network Standards Reviews approximately every 24 months
- b) provide Partner Food Banks with at least 90 days advance notice of such periodic reviews
- c) provide Partner Food Banks with materials for use in preparing for such reviews
- d) conduct the reviews during regular business hours unless otherwise agreed upon with the Partner Food Bank
- e) use the results of the Partner Food Bank's most recent third party food safety audit to inform the reviews

10.2 Feedback Following Review

After completing a Network Standards Review, FANO will seek to meet with Partner Food Bank staff and Board representatives to provide an oral report on the findings of the visit. FANO will provide a written report of its findings to the Partner Food Bank CEO/Executive Director and Board Chair within 30 days after completion of a Network Standards Review, and, if relevant, will work with the Partner Food Bank to identify root causes of shortfalls, improvement actions and responsive timelines, and benchmarks for future reviews.

10.3 Unannounced Site Visits

FANO may conduct unannounced Partner Food Bank site visits when FANO reasonably believes that a Partner Food Bank is operating in a manner that is materially inconsistent with the requirements set out in this Agreement. FANO will provide an oral or written report to the Partner Food Bank CEO/Executive Director and Board Chair as promptly as possible following such a visit.

10.4 FANO Support

FANO will work collaboratively with Partner Food Banks in supporting adherence to the Network Standards. By way of example and not of limitation, FANO may:

- a) provide Network Standards exemptions under Section 10.5
- b) increase the frequency of engagement meetings and consultations
- c) provide additional training and technical support to Partner Food Bank directly or through staff or other resources provided by other Partner Food Banks
- d) assist Partner Food Banks in developing and monitoring a corrective action plan

- e) assist Partner Food Banks in developing collaborations with other Partner Food Banks or other members
- f) work with the National Council to research and develop approaches to issues that challenge multiple Partner Food Banks across the Network

10.5 Exemptions from Network Standards

Exemptions from some Network Standards may be appropriate for some Partner Food Banks. In line with that recognition, Partner Food Banks may request exemptions on the following basis:

- a) The Partner Food Bank submits a written application to FANO. The application must: (i) specify the standard from which the Partner Food Bank requests exemption; (ii) explain why an exemption is needed; (iii) state the desired duration of exemption; and (iv) describe the Partner Food Bank's plan for addressing the underlying issue.
- b) FANO will review the application. It may contact the Partner Food Bank for further information. FANO will approve, deny, or follow up with Partner Food Bank for more information regarding the request within 60 days of its submission.
- c) If FANO approves the exemption, it may specify a limited time period for the exemption. It may also condition the exemption on the Partner Food Bank's agreement to take specific measures to address the issue, complete specified actions, meet stated milestones by specified dates, or fulfill other conditions as FANO may reasonably require.
- d) If FANO determines that the Partner Food Bank is not executing any agreed action plan or is otherwise not acting in good faith, it may withdraw the exemption at any time. The withdrawal will be effective upon delivery by FANO to the Partner Food Bank of a notice to that effect.
- e) If FANO does not approve or later withdraws an exemption, FANO will be free to take accountability actions in response to any failure to comply with Network Standards.

For clarity, FANO will not approve exemption requests that allow non-compliance with legal requirements or generally accepted food safety practices and protocols.

10.6 National Council Notification

Following a Network Standards Review or at such other times as FANO determines appropriate, FANO will notify the National Council in cases involving food safety, distribution practices, financial or organizational integrity, or other issue that could have a material adverse effect on the reputation of the Partner Food Bank or Network or other matter involving material non-adherence by a Partner Food Bank.

11. FANO Network Support and Resources

11.1 National Food Industry Liaison

FANO will serve as liaison between the national food industry and the Network to facilitate allocation and distribution of Product at the national level in line with methodologies and systems developed in consultation with the National Council.

11.2 Resource Allocation

FANO will distribute funds and other non-food resources to Partner Food Banks and other members in accordance with **Appendix L**.

11.3 Network Reserve

FANO will maintain and annually replenish, as needed, a network reserve (“Network Reserve”) of a minimum of \$1,000,000. The Network Reserve will be available to fund a portion of capacity-building expenses of Partner Food Banks struggling to meet Network Standards, meet minimum operational capabilities, maintain collaborative relationships with other members, and/or who face a reputational risk. FANO may make disbursements from the Network Reserve in such amounts and on such terms as it determines in its sole discretion.

11.4 Technology and Communications Systems

FANO will maintain appropriate systems and tools for linking Product donors to Partner Food Banks as set out in **Appendix C**, maintain an intranet site (known as of the date of this Agreement as “HungerNet”) and other Network communication systems, and support as appropriate enterprise resource planning systems.

11.5 Technical Support

FANO will provide a range of technical support to Partner Food Banks, including support on operational, technology, fundraising, and other matters. Such support may include, without limitation, tools, templates, and opt-in services intended to help Partner Food Banks meet Network Standards, increase internal capacity, facilitate best practice sharing, and support professional development.

11.6 Shared Learning Opportunities

FANO will provide Partner Food Banks with access to shared learning opportunities, including Network conferences and other events, webinars, newsletters, and participation in task forces or other groups. FANO will provide Partner Food Banks with information on food safety, Board responsibilities, and other matters, and will work to share best practices across the Network. FANO will provide Partner Food Banks with resources, such as a glossary or language guide, relating to equity, diversity, and inclusion.

11.7 Research and Publication

FANO will carry out and support research and publication on hunger and other matters.

11.8 Reporting

FANO will issue periodic and other reports to Partner Food Banks: (a) relating to Network performance, advocacy activities, and other matters and (b) as required by other provisions of this Agreement including, without limitation, **Appendix L** (resource allocation) and **Appendix M** (relationship management). FANO will consult with the National Council in determining the topics for regular reporting.

11.9 Innovation Support

FANO will engage in research and development of innovative approaches to hunger. Topics may include, without limitation, new technology platforms, new programs, new advocacy approaches, and relationships with health care, business, and other partners.

11.10 Collaboration and Engagement

In line with the Network Charter, and with advance notice to and consent of the relevant Partner Food Bank, FANO Board members, executive team members, researchers, and other FANO staff and consultants may periodically visit Partner Food Banks or otherwise participate in listening sessions, meetings, and events with Partner Food Banks.

11.11 Implementation Guidance

FANO in consultation with the National Council may develop contract implementation guides, issue guidance documents, establish new systems or procedures, and take similar

actions that address interpretation and implementation of this Agreement, emerging issues, new legislative or regulatory developments, or other matters.

11.12 External Relationships

FANO may enter into relationships with external health care, service, hunger relief, diversity/equity/inclusion, business, and other organizations as FANO may believe appropriate to advance the Network's mission.

12. FANO Advocacy, Marketing, and External Communications

12.1 Public Engagement

FANO will work to engage the public nationally in the fight to end hunger, with the goals of driving engagement in the movement among a variety of stakeholders (including people facing hunger), bringing attention to the social and systemic barriers that contribute to food insecurity, and encouraging and enabling overall support for the Network's mission. Such efforts may include advocacy for legislation that protects people from going hungry and use of national campaigns with earned, owned, and paid content.

12.2 Branding and Communications Activities

FANO will develop national messaging and branding campaigns, maintain FANO-created websites, engage with businesses in cause marketing campaigns, and carry out other external communications activities, all in support of the Network and people facing hunger.

12.3 Messaging about Partner Food Banks

FANO in appropriate external marketing and communications materials will make clear the role of Partner Food Banks in addressing hunger through securing and distributing food and carrying out a variety of programs in their communities. FANO will, where feasible given the context, provide website links to Partner Food Banks and their Affiliate Food Bank partners to enable pathways for people to donate, volunteer and/or find food and services locally. Such actions will include, without limitation, prominent placement of a food bank locator or other directory on the feedingamerica.org website.

12.4 Joint Campaigns

FANO may lead development of joint campaigns including advocacy, cause marketing, direct marketing, or other activities intended to raise awareness of the issue of hunger. FANO will seek to structure and execute such campaigns in line with Partner Food Bank needs, and to provide Partner Food Banks with relevant tools to leverage value from the campaigns. FANO will invite feedback from Partner Food Banks regarding concluded joint campaigns.

12.5 Communication about Network Role

FANO in appropriate external marketing and communications materials will describe the structure of the Network and FANO's role and activities in supporting the Network and its mission.

12.6 Advocacy Resources and Tools

FANO will make available to Partner Food Banks advocacy training and materials, and provide consulting support as appropriate on state and local advocacy matters.

12.7 Crisis Communication

FANO will make available to Partner Food Banks playbooks or other resources relating to crisis communication response, and will coordinate with and support Partner Food Banks as appropriate as situations may arise.

12.8 External Statements

FANO will maintain a process for assessment, development, consultation with the National Council, and communication to the Network of external statements regarding events, moments, and issues of national significance. Such process must take into account factors such as the event, moment, or issue's implications for people facing hunger, ties to the

Network's mission, connection to the movement to end hunger, and external considerations such as national media attention. FANO will review the process at least every 2 years with the National Council.

12.9 Public Meal Claims

FANO must have a documented process to support any public claims of meals or pounds provided per dollar based on its own computations. FANO will each year review such process for accuracy, and its CFO will attest to such process. FANO will each year submit the process to the National Council for review and publish a description of the process to the Network.

13. FANO Organizational Matters

13.1 Corporate Governance

FANO will maintain corporate governance arrangements and practices in accordance with the same guidelines that are applicable to Partner Food Banks as set out in **Appendix F**.

13.2 Board Composition

The FANO Board will include at least 3 voting directors who are executives of Partner Food Banks.

13.3 National Council Chair Engagement with FANO Board

As provided in the FANO bylaws, the National Council Chair will be a non-voting member of the FANO Board.

13.4 Financial Condition and Reporting

FANO will comply with the following financial condition and reporting requirements:

- a) FANO will maintain either: (i) operating reserves equal to at least 25% of annual cash operating expenses, determined as of fiscal year-end or (ii) positive working capital in each of the two preceding fiscal years. For the purposes of this Section 13.4(a): (x) operating reserves means liquidity as disclosed under GAAP, minus current liabilities excluding in-kind current liabilities and (y) working capital means current assets less current liabilities excluding inventory.
- b) If FANO does not meet the requirement set out in Section 13.4(a), FANO must develop a written plan and timeline to achieve the standard, and have such plan and timeline approved by the FANO Board. FANO will provide the approved plan and timeline to the National Council following such FANO Board approval.
- c) FANO in its financial accounting and reporting will adhere to the same guidelines that are applicable to Partner Food Banks. Such guidelines are set out in **Appendix F**.
- d) FANO will annually obtain an audit of its financial statements by an independent public accounting firm. FANO will post the audited financial statements and an unqualified opinion letter on the feedingamerica.org website no later than 60 days after the date of final review of such statements by the FANO Board.

13.5 Insurance

FANO will maintain such insurance coverage as is required by applicable law. At a minimum, FANO will maintain: (a) comprehensive general liability insurance with combined liability limits of not less than \$5,000,000 per each occurrence; (b) directors and officers insurance with limits of not less than \$1,000,000; and (c) cyber security insurance at a level appropriate to FANO's size as determined by revenue. Such coverage must be underwritten by an insurance carrier rated A (includes ratings of A-, A or A+) by the A.M. Best Company.

13.6 Notice

FANO will notify Partner Food Banks promptly of:

- a) any changes in its status as a nonprofit corporation in good standing under its jurisdiction of incorporation or any loss of tax-exempt status
- b) the departure of its chief executive officer
- c) loss of funding, the filing of any litigation, or any other development that has or could have a material adverse effect on its financial condition or otherwise materially affect its ability to carry out its operations
- d) any development that could have material adverse effect on the reputation of FANO, the Network, or any Partner Food Bank, or on donor relations

FANO will coordinate with Partner Food Banks in carrying out crisis communications actions as appropriate.

14. Amendment

14.1 Partner Food Bank-Initiated Amendments

Partner Food Banks may at any time propose amendments to this Agreement including its appendices. National Council members and FANO will be available to Partner Food Banks who wish to discuss an issue and possible amendment proposal before starting the formal process under this Section 14.1. Partner Food Banks may propose amendments in accordance with the following process:

- a) One or more Partner Food Banks submit a petition to FANO.
- b) The petition must describe the amendment, provide the rationale, be supported and signed by at least 10% of Partner Food Banks, and identify the signatories.
- c) FANO will review the petition.
- d) If the petition does not meet the submission requirements, FANO will so advise petitioner, and explain why. Petitioner may revise and resubmit if it so chooses.
- e) If the petition meets the submission requirements, FANO will review the proposal.

If FANO approves the proposed amendment, the National Council will initiate the voting process set out in Section 14.3 ("Voting Process"). If FANO, after consultation with the National Council and as a party to this Agreement, decides not to approve the proposed amendment, the petition will not go forward, FANO will explain the rationale to petitioner, and FANO will make the disclosures contemplated by Section 14.5.

14.2 Other Proposed Amendments

The National Council and FANO may propose amendments as follows:

- a) The National Council and FANO every 2 years will consider whether targeted amendments to this Agreement are appropriate in view of member input, Network Standards Review findings, external developments, or other factors.
- b) As provided in **Appendix M**, the Relationship Integrity Committee ("RIC") may recommend that the National Council and FANO consider possible amendments.
- c) The National Council and FANO may each at any time recommend to the other consideration of a possible amendment.

The National Council and FANO will jointly determine the nature of and process for review of such proposals, with a goal of listening to and seeking input from Partner Food Banks and, as appropriate, other members before submitting a proposal for a vote. If, after such discussion and review, FANO supports the proposed amendment, the National Council will initiate the Voting Process. A separate process for technical amendments is set out in Section 14.6.

14.3 Partner Food Bank Voting

The Voting Process is as follows:

- a) FANO will distribute a written or online ballot that describes the proposed amendment, provides the rationale, identifies the proponents, and sets out the voting period, effective date of the amendment, and plan for Partner Food Bank and other member briefing and discussion opportunities.
- b) The National Council and FANO will establish a process for answering questions from Partner Food Banks and other members and facilitating discussion about the proposed amendment.
- c) Partner Food Banks will have between 30 – 60 days to vote, with the National Council to determine the voting period in each case.
- d) Approval requires that (a) at least 50% of Partner Food Banks vote (quorum); and (b) at least 67% of those voting vote in favor of the proposal.
- e) Each Partner Food Bank has one vote; all Partner Food Banks vote as a single class.
- f) If the proposal is not approved, FANO will so notify Partner Food Banks and other members as appropriate, and will advise them of the outcome of the vote and the percentage of votes in favor of and against the proposal.
- g) If the proposal is approved, FANO will so notify Partner Food Banks and other members as appropriate, advise them of the outcome of the vote and the percentage of votes in favor of and against the proposal, and take other appropriate communication and implementation actions.

The amendment will take effect on either the effective date stated in the amendment, or 10 days after FANO announces voting results, whichever is later.

14.4 Review and Effective Date Timing

For planning and implementation purposes, the National Council and FANO will when feasible: (a) schedule amendment review and voting activities into the same period each year and (b) set effective dates for approved amendments on the same date of each year.

14.5 Transparency Regarding Proposed Amendments

FANO will make available on HungerNet: (a) materials provided to Partner Food Banks in connection with the Voting Process; (b) information about Partner Food Bank-proposed amendments not approved by FANO including the percentage of Partner Food Banks who supported and signed the petition referenced in Section 14.1; and (c) information about National Council-proposed amendments not approved by FANO.

14.6 Technical Amendments

For purposes of this Section 14.6, “technical amendments” means amendments to this Agreement that reflect a regulatory, statutory or tax law change defined by or required by a governmental authority, developments in generally accepted industry practices, or corrections of inconsistencies, typographical mistakes, inaccurate cross-references, or other errors in drafting. The approval process for such technical amendments is as follows:

- a) FANO will develop such technical amendments.
- b) FANO will submit any such technical amendment to the National Council for its review and approval. The National Council may decline to approve the proposed technical amendment only if it reasonably concludes that it goes beyond a technical change permitted by this Section 14.6.
- c) The National Council and FANO may seek Partner Food Bank and other relevant member input, including holding listening sessions and otherwise soliciting views.
- d) If the National Council approves the technical amendment, it will be considered fully approved, without need for the Voting Process.
- e) FANO will notify Partner Food Banks and other relevant members, including providing information about the rationale for the technical amendment, and take other appropriate implementation actions.

Such technical amendments may be reflected in development of revised or new appendices or, if appropriate, revised contract text. A technical amendment will take effect no earlier than 30 days after FANO provides notice of approval. Notwithstanding the foregoing, this Section 14.6 does not authorize any amendment that materially adversely affects the rights or obligations of Partner Food Banks under this Agreement.

14.7 Adjustments in Fee Amounts, Policies, Plans, and Guidance Materials

For clarity, National Council and FANO adjustments of fee amounts as set out in **Appendix E**, FANO adjustments in fee amounts and tier levels as set out in **Appendix G**, policies and plans adopted by the National Council and FANO as contemplated by **Appendix I** and other provisions of this Agreement, and changes in guidance or resource materials provided by FANO, are not "amendments" within the meaning of this Section 14.

14.8 Amendment Application

All amendments to this Agreement apply to the contracts with every Partner Food Bank, without need for additional action by the Partner Food Bank or FANO. Changes in Service Area designations or other matters unique to a specific Partner Food Bank will be addressed through separate documents approved by FANO and such Partner Food Bank.

14.9 Amendments Affecting Other Operational Agreements

All amendments to this Agreement concerning provisions that also appear in other Operational Agreements will apply to all such agreements, except as may otherwise be contemplated by such amendment, without need for additional action by any party.

14.10 Glossary

All amendments to this Agreement that add defined terms or change the meaning of defined terms included in the Glossary will result in automatic amendments to the Glossary, without need for action by any Partner Food Bank or other member. FANO will revise and recirculate the Glossary as appropriate.

14.11 Individual Partner Food Bank Concerns

Some Partner Food Bank concerns about the Agreement may be specific to a Partner Food Bank and thus not appropriately addressed through an amendment. To that end, nothing in this Section 14 precludes a Partner Food Bank from: (a) requesting guidance or technical assistance from FANO; (b) as applicable, seeking an exemption from Network Standards through the process set out in Section 10.5; or (c) engaging the relationship management process set out in Section 16.

15. Review and Replacement

15.1 Comprehensive Review

Beginning in early 2031, the National Council and FANO will begin a comprehensive review of this Agreement. The National Council and FANO will carry out a process that reflects the inclusion, transparency, and shared leadership commitments set out in the Network Charter. The goal of such review will be to generate a proposed updated contract for review and approval by Partner Food Banks and FANO before the February 28, 2033 end of the Term. Such updates may be technical or otherwise narrow in nature, or may be more material in terms of both form and substance.

15.2 Extension of Review Period

The National Council and FANO may jointly extend the current Term for up to 1 year, without need for a Partner Food Bank vote, if the review, updating, and approval process appears as if it will extend past the end of the current Term. Any extension beyond 1 year requires Partner Food Bank approval through the Voting Process.

15.3 Partner Food Bank Approval

The National Council will seek Partner Food Bank approval of the proposed new contract through the Voting Process.

15.4 Extension of New Contract

The National Council and FANO will offer the new contract to all Partner Food Banks. If, as of the effective date of the new contract, a Partner Food Bank is on probation under Section 18, suspended under Section 19, or holds exemptions from Network Standards under Section 10.5, such status will continue, and its resolution will be addressed under the provisions of the new contract.

16. Relationship Management

16.1 Scope

All disputes, claims, controversies, and appeals (including, without limitation, claims under the Agreement or other contract claims, and tort or statutory claims) between Partner Food Banks, or between Partner Food Banks and FANO, will be resolved in accordance with this Section 16. Except as otherwise provided in Sections 16.4 (appeal of certain FANO decisions), 16.5 (appeal a denial by FANO of a request for extenuating circumstances for Inadequate Service), and 16.6 (FANO decisions not subject to appeal), FANO and Partner Food Banks will take the conflict resolution actions contemplated by, and otherwise adhere to the process set out in, Sections 16.2 and 16.3. Disputes between Partner Food Banks relating to government and other third party contracts are addressed in Section 16.8.

16.2 Senior-Level Discussion of Dispute

Partner Food Banks will first seek to resolve disputes between themselves through CEO/Executive Director or other senior-level discussion or as they have otherwise agreed in a Local Agreement or other agreement or memorandum of understanding. FANO and Partner Food Banks will first seek to resolve disputes between them through senior-level discussion. All involved are expected to carry out such efforts in a manner reflective of and consistent with the Network Charter.

16.3 Required Referral to the RIC

If after senior-level discussions the dispute is not resolved within 90 days of the first such discussion and one of the disputing parties wishes to take the matter to the RIC referenced in **Appendix M**, and except as otherwise provided in this Section 16, such party will so notify the other party, and both parties will promptly take the actions contemplated by, and otherwise adhere to the terms set out in, **Appendix M**. A party may initiate arbitration, litigation or other legal proceedings only if:

- a) such party made a good faith effort to resolve the dispute through discussions with the other party;

- b) such party notified the other party of its desire and willingness to take the matter to the RIC; and
- c) the other party refused to participate in the RIC process.

In such situations, such party should advise the RIC and FANO of the situation. A refusal to participate in the RIC process will be considered non-adherence to this Agreement. A party initiating legal proceedings in such cases will do so in accordance with **Appendix M**.

16.4 Appeal of Certain FANO Decisions

Partner Food Banks may appeal the following decisions by FANO:

- a) denial of an application for exemption from a Network Standard under Section 10.5
- b) withdrawal of an exemption from a Network Standard under Section 10.5
- c) suspension under Section 19
- d) termination under Section 20
- e) denial of a request for extenuating circumstances for Inadequate Service under Section 17.4

In the cases contemplated by (a) – (d), a Partner Food Bank must submit a written appeal petition to FANO no later than 10 days after delivery by FANO to Partner Food Bank of notice of the decision. Unless otherwise agreed, FANO and Partner Food Bank will then promptly submit the matter to binding arbitration as provided in **Appendix M**; such appeals are not within the scope of the RIC process set out in such appendix. Failure to submit a timely notice of appeal to FANO results in loss of appeal rights. Upon loss of appeal rights, FANO's decision will become final and binding. Appeals in the cases contemplated by (e) will be addressed as provided in Section 16.5.

16.5 Appeal of Denial of Request for Extenuating Circumstances

In cases involving appeal of a denial by FANO of a request for extenuating circumstances as contemplated by Section 17.4, a Partner Food Bank must submit a written appeal petition to the National Council no later than 10 days after delivery by FANO to Partner Food Bank of notice of the decision. The National Council may approve the appeal in its entirety, approve extenuating circumstances for some of the counties for which such approval is sought, or deny the appeal in its entirety. The decision of the National Council will be final. For clarity, appeals are not within the scope of the RIC process set out in **Appendix M**. Failure to submit a timely notice of appeal to the National Council results in loss of appeal rights. Upon loss of appeal rights, FANO's decision will become final and binding.

16.6 FANO Decisions Not Subject to Appeal

Notwithstanding the provisions of this Section 16, Partner Food Banks may not appeal or otherwise challenge:

- a) determinations by FANO of physical Service Area boundaries under Section 2.9
- b) findings from a Network Standards Review under Section 10
- c) probation determinations by FANO under Section 18
- d) denial of grant or other applications for FANO funding or other resources under **Appendix L**

- e) denial of disaster services reimbursement requests under **Appendix H**

The conflict resolution processes contemplated by this Section 16, including both review by the RIC and mediation or arbitration, do not cover such matters, and FANO's decision or determination will be final.

16.7 Relationship to Accountability Actions

For clarity, a matter within the scope of the RIC process may result in FANO taking an accountability action under Sections 17 – 20, but nothing in or contemplated by this Section 16 (including commencement or pendency of the RIC process): (a) limits FANO's ability to take such accountability actions; or (b) delays or limits any process under Sections 17 – 20 that may be taking place concurrently with the RIC process. FANO may take information provided by the RIC into account in reviewing Partner Food Bank performance and carrying out accountability actions as provided in this Agreement.

16.8 Government and Other Third Party Contracts

For clarity, disputes between Partner Food Banks relating to the interpretation, performance, breach, and enforcement of USDA, state, or other third party contracts will be resolved in accordance with, and to the extent such disputes are within the scope of, the dispute resolution provisions of such contracts.

16.9 Disputes with Affiliate Food Banks

Disputes between Partner Food Banks and Affiliate Food Banks will be resolved as provided in the Affiliate Food Bank Agreement Template contemplated by **Appendix E**.

17. Inadequate Service

17.1 Definitions

For purposes of this Agreement, "Inadequate Service" means a Partner Food Bank did not provide, during the relevant measurement period, at least 50% of the Network-wide Service Area median of Meals Per Person in Need ("MPIN") in each county of its Service Area. MPIN is calculated as Meals divided by Person in Need with such terms defined as follows:

- a) "Meals" equals total pounds of food (not including non-food Product or water estimates) distributed in the Partner Food Bank's Service Area, divided by the latest USDA pound-to-meal conversion factor used by FANO, and meals provided through the USDA SNAP application assistance conducted by or organized by Partner Food Banks. FANO will communicate changes in the USDA pound-to-meal conversion used when applicable.
 - i) SNAP meals (as measured by the FANO SNAP impact calculator) may not account for more than 49% of the total meals provided toward a Partner Food Bank's measurement at the total Service Area level.
 - ii) SNAP meals will not be included in calculating the Network-wide Service Area median.
 - iii) If the Partner Food Bank does not have the USDA TEFAP contract for a given county or counties in its Service Area, and the contract is held by another Partner Food Bank, then the TEFAP pounds distributed into the county or counties will be credited to the Partner Food Bank whose Service Area it is for purposes of measurement.
 - iv) If the Partner Food Bank does not have the USDA TEFAP contract for a given county or counties, and an organization outside of the Network holds the contract, FANO will augment the meal distribution report for the county or counties for purpose of measurement using the national average of TEFAP receipts on a pro-rata basis. There will be two types of TEFAP augments:

- Partner Food Banks will receive a full TEFAP augment when the Partner Food Bank does not have the contract for entitlement and does not receive Section 32 bonus Product.
 - Partner Food Banks will receive a partial TEFAP augment where the Partner Food Bank does not have the contract for entitlement and does receive Section 32 bonus Product.
- b) "Person in Need" equals the number of people in the Service Area who are food insecure as calculated through the Map the Meal Gap methodology.

In cases where a Partner Food Bank operates in a Shared Service Area, FANO will sum the distributions of all Partner Food Banks sharing the county or counties.

17.2 Consequences

If FANO determines that: (a) a Partner Food Bank is providing Inadequate Service; and (b) the Partner Food Bank has not demonstrated extenuating circumstances as provided in Section 17.3, then FANO may at its discretion (i) reassign all or a portion of the Partner Food Bank's Service Area as provided in Section 17.5; or (ii) take other accountability actions as set out in Sections 18 – 20. FANO will notify the Partner Food Bank of its decision.

17.3 Extenuating Circumstances

A Partner Food Bank who FANO finds is providing Inadequate Service can avoid reassignment or other accountability actions by demonstrating to FANO extenuating circumstances that are resulting in such Partner Food Bank not meeting the standard set out in Section 17.1. The process for such demonstration and review is as follows:

- a) A Partner Food Bank must submit to FANO, within the time specified by FANO, an application describing such circumstances, their impact on service delivery in the relevant counties, and the actions the Partner Food Bank is taking to resolve the problems. FANO will make available to Partner Food Banks an application form and instructions.
- b) FANO will review the report and notify the Partner Food Bank of its decision as promptly as possible. FANO may approve the application in its entirety, grant extenuating circumstances for some of the counties for which such grant is sought, or deny the application in its entirety.
- c) For clarity, if FANO grants a request in part, such determination means that FANO will not consider such Partner Food Bank to be in material non-adherence to this Agreement solely because of Inadequate Service in a county or counties.
- d) FANO will make available to Partner Food Banks a list of all counties that are the subject of an extenuating circumstances determination. FANO will review the status of those counties at least annually.

17.4 Appeal

If FANO does not approve a request for extenuating circumstances, a Partner Food Bank may appeal the decision to the National Council as provided in Section 16.5.

17.5 Reassignment Process

FANO will follow these steps when reassigning all or a portion of a Partner Food Bank's Service Area for any reason:

- a) FANO will notify all Partner Food Banks of the pending reassignment promptly following the date of lapse of appeal rights or completion of the relevant appeal process, as the case may be (“Reassignment Process Start Date”).
- b) FANO will seek input and recommendations from Partner Food Banks in the state where the subject Service Area is located regarding disposition of the subject Service Area. FANO may also engage the relevant PSA in such consideration.
- c) If such interactions do not result in a shared recommendation, FANO will seek input and recommendations from Partner Food Banks serving counties contiguous to the subject Service Area (if different from above) regarding its disposition. FANO may also engage the relevant PSA in states contiguous to the subject Service Area (if different from above) in such consideration.
- d) FANO will consider the input and recommendations and make a decision.
- e) If FANO is unable on a timely basis to complete a reassignment to another Partner Food Bank, it may solicit applications from other organizations that it believes are capable of serving the subject Service Area and meet the requirements for membership in the Network as a Partner Food Bank.
- f) FANO will enter into an appropriate agreement regarding the subject Service Area with an existing Partner Food Bank or a new Partner Food Bank, as the case may be, and promptly notify all Partner Food Banks of the change.

If, in cases involving reassignment by reason of Inadequate Service, FANO does not reassign the subject Service Area within 90 days of the Reassignment Process Start Date, the subject Service Area will not be reassigned, and FANO may not reassign it without recommencing and carrying out the process described in this Section 17.5. Such time limit is not applicable in cases involving reassignment by reason of termination. As provided in Section 2.9, a Service Area may not be reassigned without the Partner Food Bank’s consent except under this Section 17 or as a result of suspension under Section 19 or termination under Section 20.

18. Probation

18.1 Overview

Probation is an accountability action that provides Partner Food Banks with the opportunity to address and resolve performance or other issues.

18.2 Basis

FANO may place a Partner Food Bank on probation if FANO reasonably determines that the Partner Food Bank: (a) is not operating in a manner materially consistent with the Network Standards and has failed to remedy such problem within 15 days after receipt from FANO of notice of such problem; (b) has engaged in practices or delivered services in a manner which may adversely affect Product integrity, donor relations, Network reputation and effectiveness, or relationships with other members; or (c) has failed to act in a manner materially consistent with the Network Charter or has demonstrated a pattern of material non-adherence to the Network Standards.

18.3 Notice

FANO will provide written notice of probation to the Partner Food Bank and to the National Council Chair (or the National Council Vice Chair if the National Council Chair’s Partner Food Bank is the subject of the probation). The notice will specify the reasons for probation and the remedial and other actions necessary for relief from probation.

18.4 Consequences

During the period of probation: (a) FANO may put the Partner Food Bank on grant suspension under **Appendix L** and the Partner Food Bank will not be eligible for grants or

other funding offered through FANO; and (b) FANO may impose a full or partial hold on the allocation of Product to the Partner Food Bank.

18.5 Duration

The maximum length of probation is 180 days unless extended by FANO under Section 18.7.

18.6 Relief from Probation

FANO may lift the probation, at its discretion, upon finding that the Partner Food Bank has adequately addressed the problem(s) specified in the notice of probation. FANO may condition any such decision upon agreement by the Partner Food Bank to take specific measures to address the problem, complete specified actions or meet stated milestones by specified dates, or fulfill other conditions as FANO may require. FANO will not allocate to the Partner Food Bank any Product withheld during probation.

18.7 Failure to Remedy

If FANO reasonably determines that the Partner Food Bank has failed, by the end of the probation period, to adequately address problem(s) outlined in the notice of probation, FANO may: (a) extend the probation for a period of time not to exceed another 180 days; (b) suspend the Partner Food Bank as set out in Section 19; or (c) terminate the Partner Food Bank as set out in Section 20. FANO will notify the Partner Food Bank and the National Council Chair (or the National Council Vice Chair if the National Council Chair's Partner Food Bank is the subject of the probation) of its decision.

19. Suspension

19.1 Overview

Suspension is an accountability action that may follow a decision by FANO under Section 18 to put a Partner Food Bank on probation.

19.2 Basis

FANO may suspend a Partner Food Bank from the Network if FANO reasonably determines that the Partner Food Bank has failed, by the end of a probation period, to adequately address the problems that gave rise to the probation.

19.3 Notice

FANO will provide notice of any suspension to the Partner Food Bank and to the National Council Chair (or the National Council Vice Chair if the National Council Chair's Partner Food Bank is the subject of the suspension). The notice will specify the reasons for suspension and the remedial and other actions necessary for relief from suspension.

19.4 Consequences

During the period of suspension: (a) the Partner Food Bank will not receive Product allocations from FANO or other Partner Food Banks; (b) FANO will put the Partner Food Bank on grant suspension under **Appendix L** and Partner Food Bank will not be eligible for grants or other funding offered through FANO; and (c) FANO may initiate discussions with another Partner Food Bank or other qualified organization regarding reassignment of Service Area or other delivery of services in the suspended Partner Food Bank's Service Area. FANO may also notify other Partner Food Banks, donors, and other parties of the suspension as it deems appropriate.

19.5 Relief from Suspension

FANO may lift the suspension, at its discretion, upon finding that a Partner Food Bank has remedied the problem(s) specified in the notice of suspension. FANO may condition any such decision upon agreement by the Partner Food Bank to take specific measures to address the problem, complete specified actions or meet stated milestones by specified dates, or fulfill other conditions as FANO may require.

19.6 Failure to Remedy

If the Partner Food Bank fails, within 90 days of the date of suspension, to adequately address the problem(s) specified in the notice of suspension, FANO may: (a) terminate the Agreement under Section 20; (b) reassign all or part of the Partner Food Bank's Service Area to another Partner Food Bank or other qualified party under Section 17.5; or (c) with approval by a majority vote of the National Council members then in office, extend the suspension for up to 90 more days. FANO will provide notice of its decision to the Partner Food Bank.

20. Termination

20.1 Termination by Partner Food Bank

A Partner Food Bank may withdraw from the Network and terminate this Agreement at any time by providing a written notice to that effect to FANO. The termination will be effective 30 days after delivery of such notice or at such other date as may be agreed by the Partner Food Bank and FANO.

20.2 Termination for Failure to Remedy Deficiencies

FANO may terminate this Agreement and a Partner Food Bank's membership in the Network if all of the following actions and decisions are taken: (a) FANO has placed a Partner Food Bank on probation or suspension; (b) FANO reasonably determines that the Partner Food Bank has not adequately addressed the problem(s) giving rise to the probation or suspension; (c) FANO believes termination is appropriate; and (d) the National Council, by a majority vote of the National Council members then in office, concurs with FANO's conclusions and decision.

20.3 Termination for Harm to Network

FANO may terminate this Agreement and a Partner Food Bank's membership in the Network if both of the following actions and decisions are taken: (a) FANO reasonably determines that (i) the Partner Food Bank's continued association with the Network could cause material adverse harm to the Network's reputation or operations and (ii) termination would best serve the Network; and (b) the National Council, by a vote of at least 75% of the National Council members then in office, concurs with FANO's conclusions and decision. For clarity, there is no requirement that FANO place a Partner Food Bank on probation or suspension, or take any other accountability action, before terminating a Partner Food Bank under this Section 20.3.

20.4 Notice

FANO will provide notice to a Partner Food Bank whose Agreement it terminates under Sections 20.2 or 20.3. Such notice will state the reason(s) for the termination and note the Partner Food Bank's right to appeal the decision as provided in Section 16.4.

20.5 Effective Date of Termination by FANO

The effective date of a termination by FANO will be the earliest of: (a) lapse of the period during which the Partner Food Bank may appeal the decision as provided in Section 16; (b) a final decision by an arbitrator denying the Partner Food Bank's appeal; or (c) withdrawal by the Partner Food Bank of an appeal petition.

20.6 Termination of Membership

On the effective date of termination, and as provided in the Network Charter, a Partner Food Bank will immediately cease to be a member of the Network.

20.7 Partner Food Bank Transition Activities

Upon the effective date of termination, the Partner Food Bank will:

- a) cease to represent itself as a member of the Network

- b) within 30 days, remove the Feeding America name and any FANO Marks from display at any facilities, on any vehicles or other equipment, and in any online platform or new print materials, and otherwise cease public use of FANO Marks
- c) notify the Partner Food Bank's employees and Board that the Partner Food Bank is no longer a member of the Network
- d) cooperate with reclamation by FANO, at FANO's sole discretion, of Product received by the Partner Food Bank from National Product Donors
- e) within 30 days after request by FANO, submit Product receipt and distribution records to FANO, including, without limitation, receipts, distribution audits, and inventory reconciliation records for the previous 12 months
- f) return to FANO any unexpended grant funds or vehicles still in the grant period received through the FANO grant process
- g) take any other actions as FANO may reasonably request to effect the transition

20.8 FANO Transition Activities

Upon the effective date of termination, FANO will:

- a) cease to represent the Partner Food Bank as a member of the Network
- b) within 30 days, remove references to the Partner Food Bank from FANO websites, social media, new fundraising letters and press releases, and other promotional, educational, and online materials, and otherwise cease public use of Partner Food Bank Marks
- c) promptly notify FANO Board members, employees, and Partner Food Banks that the Partner Food Bank is no longer a member of the Network, and notify National Product Donors and National Funds Donors or other parties as appropriate
- d) carry out the Service Area reassignment process set out in Section 17.5
- e) within 30 days, refund to the Partner Food Bank fees paid for the year of termination on a pro rata basis to the effective date of termination

20.9 Minimizing Impact on People Facing Hunger

A terminated Partner Food Bank and FANO will cooperate in efforts to minimize the adverse impact of the termination on people facing hunger and on other members of the Network.

20.10 Rejoining Network

A party terminated under this Section 20 may rejoin the Network only through the application process for new members as determined by FANO in consultation with the National Council.

20.11 Survival

Sections 7, 9, 16, 20 – 23, and Section D of **Appendix D** (relating to recalls), will, with respect to such terminated Partner Food Bank, survive the termination of this Agreement and the Partner Food Bank's membership in the Network.

21. Legal Relationship

21.1 Independence

FANO and Partner Food Banks are and will remain independent contracting entities. The arrangements contemplated by this Agreement do not create a partnership, franchise, joint venture, employment, fiduciary, or similar relationship for any purpose between FANO and

any Partner Food Bank, or between or among Partner Food Banks. Any use of the term “partner” or comparable term in any communication is solely for convenience.

21.2 No Authority to Bind Others

Except as may be expressly agreed in writing: (a) neither FANO nor any Partner Food Bank has the power or authority to obligate the other to a third party or commitment in any manner; and (b) no Partner Food Bank has the power or authority to obligate another Partner Food Bank to a third party or commitment in any manner. For clarity, nothing in this Section 21.2 limits FANO’s ability to enter in master product donation or other agreements or arrangements with third parties under which FANO commits to requiring Partner Food Banks, through this Agreement or other contracts or policies, to meet product use and distribution, documentation, recall, insurance or other requirements set out in such master product donation or other agreements or arrangements.

21.3 Contracts with Third Parties

FANO and Partner Food Banks may each be required to enter into contracts with third parties in order to carry out their respective Network and other responsibilities. These contracts will be the sole responsibility of the entity entering into the contract. Neither FANO nor any Partner Food Bank guarantees the performance of or assumes any obligation or liability of any other party.

21.4 Partner Food Bank Responsibility

For clarity, as between FANO and any Partner Food Bank, and as between Partner Food Banks (including Partner Food Banks with Shared Service Areas), each individual Partner Food Bank is solely responsible for the planning, management, funding, and carrying out of its activities, regardless of whether or not the Partner Food Bank obtains operational, financial or other support from FANO or another Partner Food Bank. For clarity, as between FANO and any Partner Food Bank, FANO is solely responsible for the planning, management, funding, and carrying out of its activities, regardless of whether or not a Partner Food Bank executive serves on the FANO Board or other engagement of Partner Food Bank staff in FANO working groups or other activities.

21.5 National Council Role

The National Council reviews certain decisions, requests, and policy matters arising under this Agreement. For convenience, such matters are listed in **Appendix N**.

21.6 Compliance with Law

FANO and Partner Food Banks will comply with applicable laws in carrying out their operations, programs, and other activities under this Agreement including, without limitation, laws relating to food handling and safety, tax-exempt status, and fundraising.

21.7 Indirect Actions

Neither FANO nor any Partner Food Bank may take any actions indirectly including, without limitation, actions taken through a related organization or third party and actions relating to Product sourcing, that, if taken directly by FANO or a Partner Food Bank, would be barred by or otherwise inconsistent with this Agreement.

21.8 Transition Communications

Partner Food Banks acknowledge that, in cases where a Partner Food Bank has provided notice of withdrawal from the Network under Section 20.1, FANO has commenced a Service Area reassignment process under Section 17.5, FANO has suspended Partner Food Bank under Section 19, or FANO has provided a notice of termination under Section 20.4, FANO may take such actions as it determines appropriate to avoid impact of the action on people facing hunger and on other members of the Network. By way of example and not of limitation, FANO may carry out discussions with, make commitments to, and provide Service Area assessments and analyses, Agency Partner information, and other relevant operating information generated by the subject Partner Food Bank to, another Partner Food Bank or other qualified persons, and to Affiliate Food Banks, RDOs, Agency

Partners, PSAs, and other constituents of the subject Partner Food Bank, regarding transition and continuation of services in the relevant Service Area.

21.9 Consent to Disclosures

FANO and Partner Food Banks have a common interest in ensuring consistent and effective service delivery, adherence to the requirements set out in this Agreement, and donor and public trust in the Network. To that end, each Partner Food Bank expressly consents to the disclosures by FANO to the National Council, the disclosures regarding accountability actions involving such Partner Food Bank as set out in Sections 17 – 20, and the other disclosures contemplated by this Agreement. Partner Food Banks are not entitled to review or approve any such disclosure prior to its release.

22. Indemnification and Liability

22.1 Definitions

For purposes of this Section 22, the following terms have these meanings: (a) “FANO Indemnified Parties” means FANO and its directors, officers, employees, volunteers, agents, and donors of both Product and funds, securities or other assets; (b) “Claims” means third party claims, liabilities, losses, damages, and expenses, including, without limitation, claims in respect of death, personal injury, and property damage, and related reasonable attorneys’ fees and expenses; (c) “Distribution Partner” means a Partner Food Bank’s Agency Partners, Affiliate Food Banks, RDOs, and other distribution partners and programs as contemplated by **Appendix E**; (d) “Indemnified Party” means a FANO Indemnified Party or a Partner Food Bank Indemnified Party, as the case may be; (e) “Indemnifying Party” means FANO or a Partner Food Bank, as the case may be; and (f) “Partner Food Bank Indemnified Parties” means a Partner Food Bank and its directors, officers, employees, volunteers, agents, and donors of both Product and funds, securities or other assets.

22.2 Indemnification by FANO

Subject to Sections 22.5 – 22.8, FANO will defend, indemnify, and hold harmless each Partner Food Bank Indemnified Party against all Claims arising directly or indirectly from: (a) FANO’s performance of or breach of any representation or obligation in this Agreement; (b) FANO’s programs, operations, or facilities; or (c) third party allegations that such Partner Food Bank’s use of any FANO Marks in accordance with the terms of this Agreement infringes such third party’s trademark, copyright, trade secret, or other rights.

22.3 Indemnification by Partner Food Banks

Subject to Sections 22.5 – 22.8, each Partner Food Bank will defend, indemnify, and hold harmless each FANO Indemnified Party against all Claims arising directly or indirectly from: (a) such Partner Food Bank’s performance of or breach of any representation or obligation in this Agreement; (b) such Partner Food Bank’s or any Distribution Partners’ programs, operations or facilities including, without limitation, the administration, handling, or distribution of Product; or (c) third party allegations that FANO’s use of such Partner Food Bank’s name, logo or other marks infringes such third party’s trademark, copyright, trade secret, or other rights.

22.4 Indemnification Procedures

Without limiting and subject to such party’s indemnification obligations, the following terms will govern demands for indemnification under this Section 22:

- a) If a Claim is asserted, the Indemnified Party will, within 10 days of acquiring knowledge of the Claim, send to the Indemnifying Party a written notice specifying the nature and amount or estimated amount of the Claim (“Claim Notice”). The Indemnified Party also will promptly provide the Indemnifying Party any additional information regarding such Claim that the Indemnifying Party reasonably requests. No failure by an Indemnified Party to provide the notice and information specified in this Section 22.4 will relieve the Indemnifying Party of any liability

under this Section 22 except to the extent the Indemnifying Party has suffered actual prejudice due to such failure.

- b) The Indemnifying Party may choose, by written notice to the Indemnified Party within 60 days of receiving a Claim Notice, to participate in or assume the defense of any Claim at its own expense and with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party assumes the defense, the Indemnifying Party will not be liable to the Indemnified Party for any legal fees or associated expenses later incurred by the Indemnified Party in connection with such defense, unless the Indemnifying Party specifically authorizes the Indemnified Party in writing to incur such expense. It is understood, however, that if the Indemnified Party reasonably concludes that its defenses to the Claim are different from or more extensive than those of the Indemnifying Party, then: (i) the Indemnifying Party may not assume (but may participate in, at its own expense) the defense of such Claim; and (ii) the Indemnifying Party will be liable for reasonable attorney's fees and associated expenses incurred by the Indemnified Party in directing such defense.
- c) Whether or not the Indemnifying Party chooses to defend or prosecute any Claim, the parties will cooperate in such defense or prosecution, including, without limitation, by providing records, information, and testimony, and by attending meetings and litigation-related proceedings as the other party may reasonably request, all at no out of pocket cost to the Indemnified Party.
- d) The Indemnifying Party will not be liable for a settlement of any Claim agreed to without the Indemnifying Party's consent (which consent will not be unreasonably withheld) unless the Indemnifying Party refuses to acknowledge liability under this Agreement and/or declines to defend the Indemnified Party in such Claim.

22.5 Other Indemnification Matters

No Indemnifying Party will have any obligation under this Section 22 with respect to any Indemnified Party to the extent the liability is solely caused by such Indemnified Party's gross negligence or willful misconduct. The indemnification obligations set out in this Section 22 are independent of and, except as provided in this Section 22.5, will not be limited in any way by the insurance requirements set out in this Agreement.

22.6 Donor Claims

Indemnification by any Indemnifying Party to any Indemnified Party for any donor claims will be limited to the aggregate amount of any insurance proceeds actually recovered by the Indemnifying Party in respect of the claim, less any amounts paid by the Indemnifying Party to the donor or other persons in respect of the actions or alleged actions forming the basis of such donor claim.

22.7 Limitation on Damages

Neither FANO nor any Partner Food Bank will be liable to the other, and no Partner Food Bank will be liable to any other Partner Food Bank, for any incidental, special, exemplary, or punitive damages under any theory of liability arising out of or otherwise related to this Agreement, even if the party has been apprised of the likelihood of such damages.

22.8 Good Samaritan Laws

Nothing in this Section 22 or elsewhere in this Agreement will waive, limit, or otherwise affect any protections against liability which may be available to a Partner Food Bank, FANO, or any other person under any state or federal "Good Samaritan Act" or similar statute.

23. General Provisions

23.1 Entire Agreement

This Agreement sets out the final, complete, and exclusive agreement between FANO and the relevant Partner Food Bank, and supersedes the Member Contract, dated October 1, 2014 ("Prior Contract"), all prior Partner Food Bank member contracts, any prior discussions and correspondence, and any course of dealing or course of performance between FANO and any Partner Food Bank relating to membership in the Network.

23.2 Identical Agreement with Each Partner Food Bank

This Agreement is separate from, and identical to, the Operational Agreements between FANO and each other Partner Food Bank.

23.3 Controlling Document

If there is any inconsistency between the body of this Agreement and any appendix, the text of this Agreement will control.

23.4 Network Charter

The understandings and arrangements set out in this Agreement reflect and are intended to operationalize the Shared Beliefs and Guiding Principles set out in the Network Charter. This Agreement should be interpreted in light of, and in a manner that gives effect to, such Shared Beliefs and Guiding Principles.

23.5 Contract Background

This Agreement is the product of a multi-year process involving multiple Partner Food Banks, Affiliate Food Banks, PSAs, Regional Co-ops, and FANO representatives, and a vote by Partner Food Banks under the Prior Contract. This Agreement should be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.

23.6 Other Contracts

Partner Food Banks may be parties to Local Agreements, Shared Media Market or other fundraising coordination agreements, or other agreements with other Partner Food Banks. FANO may be party to program, grant or other agreements with Partner Food Banks. FANO may establish terms of use for platforms and systems maintained by FANO. For clarity, no such agreement or term of use will supersede or amend this Agreement.

23.7 Waiver

Waiver of any breach or provision of this Agreement or failure to enforce any breach or provision of this Agreement will not be considered a waiver of any later breach or the right to enforce any provision of this Agreement.

23.8 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

23.9 Consents and Approvals

This Agreement includes a number of provisions in which a Partner Food Bank must obtain FANO's approval or consent, or FANO must obtain a Partner Food Bank's consent. Unless otherwise specified, the requesting party will make all such requests in writing, and the approving or consenting party will communicate all such approvals or consents in writing. For clarity, this Section 23.9 does not apply to the Voting Process; voting procedures are set out in Section 14.

23.10 Notices

Notices under this Agreement must be in writing and delivered personally, by U.S. mail, or by recognized express courier, or be sent by e-mail, to: (a) Partner Food Bank at the headquarters or administrative office address stated on its website at the time of the notice

or by email to the email address of the current CEO/Executive Director as communicated to FANO; and (b) to FANO at:

Feeding America
161 N. Clark Street, Suite 700
Chicago, Illinois 60601
Email: networkagreements@feedingamerica.org

Such notices will be considered properly given upon receipt by the recipient. FANO may change its address for notices by providing notice of such new address to Partner Food Banks.

23.11 Third-Party Beneficiaries

To the extent provisions in this Agreement relate to a Partner Food Bank's interactions or disputes with other Partner Food Banks, such other Partner Food Banks are expressly intended third party beneficiaries of such provisions, and may enforce such provisions as if they were parties to this Agreement. Such provisions include, without limitation, Sections 2, 4, 5.2, 6, 7, 8, 16, 21.1, 21.2, 21.4, 21.5, 21.9, 22.7, 22.8, 23.11, and 23.13 – 23.15. Except as specifically provided in this Section 23.11 and in Sections 22.1 – 22.3, this Agreement is for the exclusive benefit of FANO and Partner Food Bank and not for the benefit of any third party including, without limitation, any Agency Partner, Affiliate Food Bank, RDO, Regional Co-op, collaborator, donor, neighbor, employee, volunteer, or contractor of a Partner Food Bank or of FANO, and no such third party will have vested or any other rights as a third party beneficiary.

23.12 Assignment, Merger, and Similar Transactions

No Partner Food Bank may assign its rights or delegate its duties under this Agreement to anyone else without the prior consent of FANO and the National Council. FANO may not assign its rights or delegate its duties under this Agreement to anyone else without the prior consent of the National Council. For clarity, any merger or other transaction involving a Partner Food Bank that would result in changes in Service Area boundaries requires FANO's approval under Section 2.9, and Partner Food Banks must continue after such transaction to meet the Eligibility Requirements and other requirements set out in this Agreement.

23.13 Governing Law for All Agreement Claims

This Agreement will be interpreted and construed in accordance with the laws of Illinois. All claims, controversies, and causes of action that arise out of or relate to the Agreement and sound in contract will be governed by the internal laws of Illinois, including its statute of limitations, without giving effect to any borrowing statute or other law that would result in the application of laws of any other jurisdiction. This Section 23.13 is applicable in cases involving both disputes between Partner Food Banks and disputes between a Partner Food Bank and FANO.

23.14 Governing Law for Non-Agreement Claims

All claims, controversies, and causes of action involving one Partner Food Bank against another Partner Food Bank that sound in tort, statute, or other non-contract authority, or that arise out of or relate to contracts other than the Agreement, will be governed by the internal laws of the state where the defendant is domiciled, including its statute of limitations, without giving effect to any borrowing statute or other law that would result in the application of laws of any other jurisdiction. All claims, controversies, and causes of action involving a Partner Food Bank against FANO that sound in tort, statute, or other non-contract authority, or that arise out of or relate to contracts other than the Agreement, will be governed by the internal laws of Illinois, including its statute of limitations, without giving effect to any borrowing statute or other law that would result in the application of laws of any other jurisdiction.

23.15 Jurisdiction and Venue

Any judicial proceedings between Partner Food Banks (not involving FANO) must be brought in an appropriate court in the state where the defendant is domiciled, or otherwise in accordance with any applicable Local Agreement. Any legal proceedings between FANO and a Partner Food Bank must be brought in either the United States District Court for the Northern District of Illinois sitting in Chicago, Illinois, or in Illinois state court sitting in Chicago, Illinois, and in no other forum. FANO and Partner Food Banks expressly consent to such exclusive jurisdiction and venue provisions, and waive any objection that they may now or later have to the venue for such proceeding and any claim that such proceeding has been brought in an inconvenient forum.

23.16 Further Assurances

FANO and Partner Food Banks will sign those other documents and take those other actions as the other may request in order to effect the relationships and activities contemplated by this Agreement and to account for and document those activities.

23.17 References to Days

Unless otherwise specified, references in this Agreement to days means calendar days, not business days.

23.18 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

* * * * *

Partner Food Bank and FANO signed this Agreement as of the date stated in its first paragraph.

[NAME OF PARTNER FOOD BANK]

FEEDING AMERICA

By: _____

By: _____

Name: _____

Name: _____

Title: CEO/Executive Director

Title: Chief Executive Officer

By: _____

By: _____

Name: _____

Name: _____

Title: Board Chair/President

Title: Chair, Board of Directors

The following appendices set out substantive contractual requirements and other terms; they are fully part of this Agreement. Signature above constitutes agreement to all provisions of this Agreement including the provisions set out in all of the appendices.

Appendix B

Adequacy of Service

1. Introduction

The Shared Beliefs and Guiding Principles set out in the Network Charter include these statements:

- We believe that no one should go hungry, ever.
- We believe that equity is at the core of ending hunger and that when we intentionally address inequities faced by people most impacted by food insecurity, everyone facing hunger benefits.
- We believe people facing hunger best understand the realities of food insecurity.
- We work to increase people facing hunger's access to nutritious and culturally preferred foods, resources, and civic engagement opportunities.

The FANO and Partner Food Bank activities set out in this **Appendix B** reflect those beliefs and principles. The actions outlined below reflect how the Network will work to identify people and communities in each Service Area most affected by food insecurity, ensure equitable access to food for all people facing hunger, and make progress on closing race-based and place-based disparities in access to food.

2. FANO-Provided Resources

2.1 Information

FANO will provide data and other information to Partner Food Banks relating to food insecurity in their Service Areas. Partner Food Banks may use such information for analysis, planning, benchmarking purposes, and such other purposes as a Partner Food Bank may determine.

2.2 Tools and Resources

FANO, with input from Partner Food Banks, will work to develop new tools and resources and refine measures for use by Partner Food Banks in creating data-informed assessments, developing locally-actionable plans, and otherwise working in alignment with the principles set out in this **Appendix B**.

3. Service Area Assessment

3.1 Service Area Assessment

Partner Food Banks will every 3 years assess food insecurity rates and food access barriers for their Service Areas at the county level ("Service Area Assessment"). Partner Food Banks will complete their initial Service Area Assessment no later than the beginning of their 2026 fiscal year. Partner Food Banks thereafter will develop successive Service Area Assessments at least every 3 years.

3.2 Format

Partner Food Banks may use either an assessment template provided by FANO or a self-developed form that includes required content as described in Section 3.4.

3.3 Data

Partner Food Banks in developing Service Area Assessments may in their discretion use data provided by FANO and information developed internally including, without limitation, data gathered through strategic planning or other processes.

3.4 Required Content

A Service Area Assessment must, on the county level:

- a) identify areas of highest food insecurity defined by both number of people and rate within the overall population (need)
- b) assess geographic and racial/ethnic disparities in need and access (equity)

3.5 Additional Content Determined by Partner Food Banks

Partner Food Banks may choose to include other variables in their Service Area Assessment beyond the elements required under Section 3.4. Such additional variables may include, without limitation:

- specific food access barriers (e.g., days and hours of operation)
- presence of additional high need populations
- the experience of people facing hunger
- additional food insecurity interventions needed or available

Partner Food Banks, especially those that serve a single county, may include more detailed variables beyond the county level such as zip code and/or census tract data.

4. Operational Response Plan

4.1 Operational Response Plan

Partner Food Banks will, within 6 months after completing the initial Service Area Assessment, prepare an operational plan (“Operational Response Plan”). Partner Food Banks thereafter will complete successive Operational Response Plans at least every 3 years. The Operational Response Plan may be informed by, coincide with, and complement the Product Sourcing Plan required every 3 years as set out in **Appendix C**.

4.2 Format

Partner Food Banks may use either a template provided by FANO or a self-developed form that includes required content as described in Section 4.3.

4.3 Required Content

An Operational Response Plan must set out strategies to provide more equitable access to food and resources to communities with highest need as identified in the Service Area Assessment. The Operational Response Plan must include:

- a) descriptions of interventions intended to achieve food and resource distribution that is aligned to the food insecure population in the Partner Food Bank’s Service Area
- b) evidence that the plan is informed by people facing hunger and a description of services and strategies intended to address race-based and place-based food access barriers and disparities in levels of food insecurity

4.4 Planning Interventions Determined by Partner Food Banks

Partner Food Banks have discretion in identifying, developing, and carrying out planning interventions appropriate to their Service Areas. Examples of such innovations with respect to aligning food and resource distribution include, without limitation:

- increasing food volumes
- increasing frequency of deliveries
- adding mobile food pantry distributions
- adding new agencies
- investing in agency capacity building (e.g., infrastructure, training, technical assistance)

Examples of such interventions with respect to race-based and place-based barriers and disparities include, without limitation:

- increasing days and hours at distribution locations
- providing outreach for additional resources that may address needs beyond food
- removing limitations on zip codes served for distributions to reduce barriers for people facing hunger, aligned within Service Area requirements set out in Section 2 of the Agreement and **Appendix A**
- increasing sourcing and distribution of culturally preferred food
- ensuring signage and intake processes are presented in relevant languages spoken by people facing hunger
- helping Distribution Partners implement practices that make their spaces and services more welcoming and affirming
- providing outreach to federal and state nutrition programs

For clarity, the interventions listed above are examples and are provided for illustrative purposes only. Partner Food Banks are free to make their own planning and implementation decisions in view of Service Area characteristics and organizational resources.

4.5 Board Review

Partner Food Banks will provide their current Service Area Assessment and Operational Response Plan to their Boards for review.

5. Affiliate Food Banks, RDOs, Shared Service Areas, and Changes

5.1 Affiliate Food Banks and RDOs

Partner Food Banks must include their Affiliate Food Banks and RDOs in the planning and assessment activities described in this **Appendix B**.

5.2 Shared Service Areas

Partner Food Banks in Shared Service Areas must collaborate on preparation of Service Area Assessments and Operational Response Plans.

5.3 Service Area Changes

If a Service Area changes, the Partner Food Bank formerly serving a county will share any Service Area Assessment and Operational Response Plan materials with the new Partner Food Bank serving such county.

6. Measurements of Service

6.1 Measures in Development

As of the date of this Agreement, FANO in collaboration with the National Council is developing new measures for evaluating service adequacy. Any change in a measure used for Service Area evaluation purposes requires amendment of this Agreement.

6.2 MPIN as Interim Measurement of Service

Pending the adoption of new measures as contemplated by Section 6.1, MPIN will continue as the required measure of service adequacy. MPIN is defined and related provisions are set out in Section 17 of this Agreement. FANO will provide MPIN data to Partner Food Banks.

7. FANO Review as Part of Network Standards Reviews

FANO as part of Network Standards Reviews may review Service Area Assessments and Operational Response Plans. Such review will be limited to confirmation of completion of such documents including coverage of required content, not evaluation of the substantive choices reflected in such documents.

* * * * *

Appendix C

Product Sourcing and Sharing

1. Introduction

1.1 Core Beliefs and Goals

The Network centers its product sourcing and sharing practices on the belief that all people facing hunger should have equitable access to food resources that are sourced by the Network. The terms set out in this **Appendix C** are intended to reflect that core belief and goal. They reinforce that Product sourcing and sharing is a core function of the Network, confirm the shared commitment of members and FANO to serving as good stewards of available food and non-food resources, reflect an expectation that Partner Food Banks demonstrate broad support from the food industry, and set out systematic and collaborative arrangements for sourcing and sharing food across the Network.

1.2 Definitions

The following terms have these meanings:

- “Product” means all food and grocery products procured by FANO or Partner Food Banks, including Produce and other edible foods, and non-food products such as personal care items and paper goods.
- “Produce” means fruits and vegetables coming from growers arriving in a raw state, fresh and not processed. Produce does not include fresh produce rescued from retailers and excludes produce that has been transformed through a process such as canning, jarring, drying, dehydration, or freezing.
- “National Product Donor” means a Product donor with regional or national operations whose primary relationship is with FANO. National Product Donors include, without limitation, manufacturers, distributors, retailers, wholesalers, produce businesses, warehouses, co-packers, nonprofit organizations, and other food or grocery related businesses.
- “Platform” means a technology platform that enables Partner Food Banks and other members to learn about, obtain, and share Product available from donors and vendors including, without limitation, Product offered to a Partner Food Bank that the Partner Food Bank cannot receive or distribute.

2. Analysis and Planning

2.1 Product Sourcing Plan

Partner Food Banks will prepare a Product sourcing plan (“Product Sourcing Plan”) in support of maximizing donations and efficient purchasing within the Network. Such Product Sourcing Plan must:

- a) demonstrate that one of the Partner Food Bank’s core functions is Product sourcing
- b) identify the people resources available and the tools provided and needed to achieve the plan
- c) show a commitment to work collaboratively with FANO and the Network to achieve the plan
- d) include active and ongoing sourcing activities of farmers, ranchers, and other agri-businesses, manufacturers, distribution centers, wholesalers, Produce growers

and producers, and retail donors, as applicable and prioritized within a Partner Food Bank's Service Area

Partner Food Banks will complete their initial Product Sourcing Plan no later than the beginning of their 2026 fiscal year. Such 3-year timing is intended to align with development of Service Area Assessments as set out in **Appendix B**. Partner Food Banks will thereafter develop successive Product Sourcing Plans every 3 years.

2.2 Shared Service Areas

Partner Food Banks in Shared Service Areas must collaborate on preparation of Product Sourcing Plans.

2.3 Affiliate Food Banks and RDOs

Partner Food Banks must include their Affiliate Food Banks and RDOs in preparation of Product Sourcing Plans.

2.4 FANO Support

FANO will make available to Partner Food Banks data and other resources intended to help Partner Food Banks meet the analysis and planning requirements set out in this **Appendix C**.

2.5. FANO Review as Part of Network Standards Reviews

FANO as part of Network Standards Reviews may review Product Sourcing Plans. Such review will be limited to confirmation of completion of such documents including coverage of required content, not evaluation of the substantive choices reflected in such documents.

2.6 FANO Sourcing Plan

FANO will develop each year a strategic Product sourcing plan ("FANO Sourcing Plan") in support of Network needs. Such plan must:

- a) demonstrate that one of FANO's core functions is Product sourcing
- b) identify the people resources available and the tools provided and needed to achieve the plan
- a) show a commitment to work collaboratively with the Network to achieve the plan
- d) include assessment of overall trends in individual food channels such as agriculture, manufacturing, wholesale, and retail

FANO will review each such FANO Sourcing Plan with the National Council. FANO will post its initial FANO Sourcing Plan on HungerNet no later than August 1, 2023.

3. Technology and Transportation

3.1 FANO Maintenance of Platform

FANO will maintain and update the Platform and, in consultation with the National Council, replace the technology over time, with a goal of ensuring that the Platform supports Product sharing goals and evolving Network needs and strategies, and allows Product donated at the national level or shared by members to be equitably accessible across the Network.

3.2 Platform Sharing Groups

FANO will ensure the Platform allows members to create customized Product sharing group functionality, in support of Platform use and to facilitate sharing of Produce and other Product.

3.3 Member Platform Usage

Partner Food Banks will use and remain active on the Platform. FANO will provide Partner Food Banks with onboarding and training support on the Platform, with a goal of onboarding all Partner Food Banks by the end of calendar year 2024.

3.4 Transportation

FANO will provide a range of transportation support to Partner Food Banks and the Network to achieve the overall goal of more collaborative Product sourcing and sharing, and to reduce overall cost and complexity. Support may include, without limitation, equipment and other grants, freight subsidies, transportation logistics coordination for Product shared through the Platform, and assistance with managing freight issues.

4. National Product Donors; FANO Produce Sourcing Support

4.1 FANO Role and Network Collaboration

FANO and Partner Food Banks will carry out National Product Donor acquisition and stewardship activities as follows:

- a) FANO and Partner Food Banks recognize that National Product Donors reside or are based in a Partner Food Bank's Service Area, and that there is an opportunity to leverage the collective resources of FANO and Partner Food Banks in cultivating such donors.
- b) Partner Food Banks acknowledge FANO's responsibility to qualify, cultivate, solicit, and steward National Product Donors. FANO will carry out such activities in collaboration with Partner Food Banks and with respect for the role and relationships of Partner Food Banks with National Product Donors in their communities.
- c) FANO will engage Partner Food Banks in National Product Donor strategy and interactions to the extent consistent with donor preferences. Such engagement may include, without limitation, advance notice of FANO meetings with National Product Donors in the relevant Service Area and strategy development discussions prior to such meetings, with a goal of identifying opportunities for collaborative donor cultivation, solicitation, and stewardship in a manner consistent with donor preferences.
- d) Partner Food Banks will permit National Product Donors, upon reasonable notice, to visit Partner Food Bank facilities, and will comply with reasonable information, reporting, meeting, and other requests from National Product Donors.
- e) FANO will represent the Network's interests in these discussions with National Product Donors including educating food industry partners about the Network's commitment to nutritious food supplies and encouraging food industry support in achieving this goal.
- f) FANO will publish and keep current a list of National Product Donors on HungerNet.

4.2 National Donor Requirements

Some National Product Donors make requests, place restrictions, or impose special requirements on some or all of their donations. Because National Product Donors may change donation requirements and restrictions, FANO will notify Partner Food Banks of such requirements and restrictions through making available a guide or other resource. Partner Food Bank will adhere to such requirements and restrictions.

4.3 No Obligation to Participate in National Partnerships

FANO pursues national Product sourcing partnerships in the interest of benefiting the entire Network and leveraging the Network's unique value proposition for National Product Donors. FANO and Partner Food Banks will address participation in such partnerships as follows:

- a) Partner Food Banks, in their discretion, may choose not to participate in national Product sourcing partnerships, or to withdraw from an existing national sourcing partnership. FANO cannot commit Partner Food Banks to national Product sourcing partnerships without their consent.
- b) Partner Food Banks are advised to evaluate the long-term consequences of a decision to not participate, including future access to Product from the relevant National Product Donor, donor choices to direct Product donations to other Partner Food Banks, and the potential for such donors to seek an alternative outlet for their Product outside of the Network.
- c) Partner Food Banks who are considering opting out will: (i) notify FANO of their intent and the rationale for their decision and (ii) collaborate with FANO to determine whether any capacity building activities or adjustments in partnership structure could address the Partner Food Bank's concerns, and whether such concerns are unique to the Partner Food Bank or reflect broader issues.
- d) Partner Food Banks who later wish to participate in a national Product partnership will so notify and cooperate with FANO in seeking to arrange such participation. FANO cannot guarantee that a National Product Donor will accept such request.
- e) In cases where a National Product Donor is considering removing a Partner Food Bank from a partnership, FANO will seek to preserve the relationship and the Product for that Partner Food Bank.

The goal of such actions is to capture as much donated Product as possible for people facing hunger.

4.4 FANO Produce Sourcing Support

FANO support of Produce sourcing will focus on:

- a) supporting local and regional efforts to increase total Produce received and distributed throughout the Network
- b) convening meetings of relevant Network representatives
- c) providing transportation logistics support
- d) seeking and/or providing funding support for transportation and VAP/PPO costs
- e) providing relevant research and capacity building assistance

Such activities reflect a recognition that relationships with Produce growers and farmers are most effectively built through local relationships and communities, and that FANO activities should center on supporting Partner Food Banks' local and regional Produce sourcing efforts with a goal of ensuring that fresh Produce is sourced, available, and distributed throughout the country.

5. Donated Product Sourcing

5.1 Sourcing Donated Product in Own Service Area

Partner Food Banks will proactively and consistently engage with potential Product donors in accordance with their Product Sourcing Plans and with the goal of maximizing donations within their Service Areas. Partner Food Banks will if needed seek to enlist neighboring Partner Food Banks, Affiliate Food Banks, the relevant PSA or Regional Co-op if any, and FANO as appropriate, to temporarily assist in food sourcing activities.

5.2 Sharing Donated Product

When a Partner Food Bank through its planning and sourcing activities generates Product donations greater than its needs or capacity, or when it is otherwise unable or unwilling to source, receive, or distribute all donated Product (whether solicited or not), such Partner Food Bank will take the following actions:

- a) After taking into account the volume and nature of the donated Product (e.g., perishable Produce, location) and other relevant factors, such Partner Food Bank will either post the Product to the Platform or contact one or more other Partner Food Banks, one or more Affiliate Food Banks, one or more relevant PSAs or Regional Co-ops, or FANO, and offer them the opportunity to receive, distribute, or redirect the Product.
- b) If no Network members opt to receive the Product within a reasonable time after posting or other outreach to multiple members, the Partner Food Bank should inform the donor that there is not a location available and willing to receive the Product. The Partner Food Bank should deliver this message with the goal of best stewarding the donor for future partnership.

5.3 Donations from Outside Service Area

A donor located in one Service Area may make an unsolicited donation offer or donation to a Partner Food Bank in another Service Area. A donor may also direct that a donation be distributed in an area other than where the donor resides or from which the donation originated. In such cases:

- a) FANO and Partner Food Banks located in the same Service Area as the donor will respect donor wishes. Neither will attempt to redirect the donation without first notifying the recipient Partner Food Bank.
- b) If the donor has offered a donation, the Partner Food Bank who received the offer will contact the Partner Food Bank located in the donor's Service Area, and seek to refer the donor to such Partner Food Bank.
- c) If the donor declines the referral, a Partner Food Bank who receives and accepts such an offer will: (i) notify the Partner Food Bank(s) in the Service Area from which the Product originated; (ii) encourage the donor to also support such local Partner Food Bank(s); and (iii) otherwise demonstrate alignment with the Network Charter.
- d) If the Partner Food Bank receives a donation from the donor, it may accept it.
- e) If the Partner Food Bank is unable or unwilling to receive or distribute the Product, it will take the actions set out in Sections 5.2.

5.4 Declining Donations

For clarity, a Partner Food Bank may decline to source, receive, or distribute a donation from any source on the basis of nutrition, cultural preference, donor identity or practices, or similar factors. Partner Food Banks will seek to share such Product with the Network as provided in Section 5.2.

6. Consent and Consultation for Sourcing Activities

6.1 No Solicitation of Product Outside Service Area without Consent

A Partner Food Bank may not solicit Product donations outside of its own Service Area without first obtaining the consent of the Partner Food Bank in the relevant Service Area.

6.2 No FANO Solicitation of Non-Produce Product without Consultation

FANO may not solicit non-Produce Product donations without first consulting with the Partner Food Bank in the relevant Service Area and otherwise carrying out its obligations under Section 4.1 of this **Appendix C**.

6.3 No FANO Solicitation of Produce without Consent

FANO may not solicit Produce donations without first obtaining the consent of the Partner Food Bank in the relevant Service Area and otherwise carrying out its obligations under Section 4.1 of this **Appendix C**.

6.4 Determining Relevant Service Area

For purposes of donor solicitation and needed consent and consultation under this Section 6:

- a) The origin of Donated Product determines the relevant Service Area.
- b) The origin of Donated Product from donors who have multiple operating or headquarter locations is the physical ship-from address of the Donated Product.
- c) “Ship-from” location means the physical location where Product is loaded for shipment directly to a Partner Food Bank.
- d) Partner Food Banks must obtain consent from the Partner Food Bank that services such area. For clarity, if a Product donor’s headquarters is located in one Service Area but the Product has a ship-from address in a second Service Area, Partner Food Banks must obtain consent from the Partner Food Bank in the second Service Area.

6.5 Shared Service Areas

For clarity, as applied to Shared Service Areas, in cases involving solicitation as contemplated by Sections 6.1 – 6.3, and in cases involving donations as set out in Section 5.3, the soliciting or receiving party must notify, consult with, or obtain the consent, as the case may be, of all Partner Food Banks operating in such Shared Service Area.

7. Purchased Product Sourcing

7.1 No Consent Required

Partner Food Banks may purchase Product outside of their Service Area without need to obtain consent from the Partner Food Bank(s) in such Service Area.

7.2 Transaction Structure

For clarity, and as contemplated by Section 21.7 of this Agreement, Partner Food Banks may not structure and carry out Product transfers (e.g., paying a nominal amount and treating the transfer as a purchase) in a manner intended to avoid the restrictions on soliciting Product set out in Section 6.1 of this **Appendix C**.

8. Relationships with Regional Co-Ops and PSAs

Partner Food Banks may take relationships with Regional Co-Ops, PSAs, and other models of Product sharing in the Network into account in developing Product Sourcing Plans and sourcing Product. For clarity, Partner Food Banks may freely accept Donated

Product from any Regional Co-Op regardless of location, and freely purchase Product from any Regional Co-Op regardless of location. Partner Food Banks have no obligation to separately verify adherence by a Regional Co-Op or PSA to sourcing requirements applicable to Regional Co-Ops and PSAs, respectively.

9. Treatment of Product as a Donation or Purchase

9.1 Overview

For purposes of this Agreement, Product received by Partner Food Banks must be classified in financial records as either purchased or donated in accordance with the intent of the donor or vendor. General information about determining donation status is provided in Sections 9.2 – 9.5, and FANO will provide additional guidance to Partner Food Banks.

9.2 IRS Elements for a Donation

The IRS identifies four primary elements that must exist for a transaction to be classified as a donation:

- a) intent of the donor to make a voluntary donation without consideration (other than cost of delivery or pickup) must be established
- b) acceptance of the donation by the nonprofit and transfer of title to the nonprofit
- c) donee acknowledgement
- d) transaction must be, in full or substantially, a non-reciprocal transfer

9.3 Preservation of Enhanced Tax Deduction for Donated Product Donors

Partner Food Banks should assume that any Product donor will want to take advantage of the enhanced deduction described in Section 170(e)(3) for donated Product.

Requirements for use of donated Product under Section 170(e)(3) are described in **Appendix E**. At a minimum, as provided in Section B.1.4 of **Appendix E**, Partner Food Banks and Distribution Partners may not sell or use Donated Product in exchange for money, other property, or services. Partner Food Banks will facilitate the ability of a donor to take the enhanced deduction by maintaining appropriate receipting procedures as set out in Section F.5 of **Appendix D**.

9.4 Donation Status Unchanged by Allowable PPO and VAP Fees

Payment of allowable PPO fees or VAP fees does not affect the classification of Product as a donation. Allowable PPO and VAP fees are set out in Section K.1.4 of **Appendix E**.

9.5 Working with Brokers and Other Third Parties

Partner Food Banks may in appropriate cases use brokers or other third parties who are not tax-exempt under Section 501(c)(3) to facilitate a Product donation transaction. Such parties are referred to as “intermediaries” by the IRS. Based on IRS guidance, below are key characteristics of an intermediary that must be present to maintain the donated status of a transaction:

- a) The intermediary does not take title of the donated Product that gives the intermediary control or variance power of the donation.
- b) The intermediary does not add costs to the transaction that are unreasonably high for administrative fees. Intermediaries can charge a commercially reasonable fee or rate to administer and transfer the Product donation to the charity.
- c) Communication to the donor of record is clear that the Product is being sourced as a donation on behalf of nonprofit entities.

10. Receipting and Reporting

Product receipting and reporting requirements for Partner Food Banks are set out in Section F of **Appendix D**.

11. Incentives

Incentives for sharing donated Product are permitted so long as the incentives used allow the Donated Product to retain its donated classification under Section 170(e)(3). Incentives may flow between Partner Food Banks, between Partner Food Banks and PSAs or Regional Co-ops, or between FANO and Partner Food Banks. Examples of incentives include, without limitation, transportation subsidies support and Platform system credits.

12. Maximizing Government Commodities

12.1 Definitions

For purposes of this Section 12, “Federal Programs” mean federal nutrition and food distribution programs such as CSFP and TEFAP.

12.2 Leveraging Network Capacity

The Network seeks to maximize distribution of government commodities to leverage its existing supply chain capacity and to provide the widest range of resources to people facing hunger. To that end, Partner Food Banks are encouraged to:

- a) apply for and carry out contracts for Federal Programs in their own Service Areas based on assessment of their distribution, financial, and staffing capacities
- b) collaborate with Partner Food Banks and relevant PSAs whenever needed to maintain effective access to and distribution of government commodities
- c) be strong partners in states where contracts for Federal Programs are led by the relevant PSA or in strong collaboration between Partner Food Banks and the relevant PSA
- d) reach out to FANO and neighboring Partner Food Banks and employ a capacity building and problem solving approach to retain distribution of government commodities within the Network, if encountering capacity, Service Area boundary, or other challenges in maximizing receipt of government commodities

Partner Food Banks are encouraged to always keep people facing hunger at the center of their decisions with respect to government commodities.

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Related Network Guidance Documents:

- [National Product Donor Requirement Guide](#)

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Appendix D

Food Safety, Product Handling, Inventory, and Other Product Matters

A. Food Safety

The food safety regulations and guidance described in this Section A have specific applications for the Network. The following list is not all encompassing; Partner Food Banks are required to comply with all local, state, and federal regulations that apply to all aspects of their operations. Food safety laws, regulations, and guidance may change during the term of this Agreement. Partner Food Banks are encouraged to regularly review applicable federal, state, and local regulations and guidance and update their operations protocols as needed.

1. Food Safety Laws and Regulations

1.1 Federal Food, Drug, & Cosmetic Act, PL 75-717

The Federal Food, Drug and Cosmetic Act (“FD&CA”) prohibits the introduction, delivery, or receipt through interstate commerce of any food, drug, cosmetic, or device that is adulterated, misbranded, or unlabeled. Federal law requires any organization, including Partner Food Banks, to promptly dispose of any foods that are, or may be, adulterated. (“Adulterated” and “contaminated” are considered synonymous terms in this Agreement.) Under the FD&CA, food is considered adulterated if:

- a) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for use as food
- b) it has been held, packaged, or prepared under unsanitary conditions
- c) it bears or contains any poisonous or deleterious substance
- d) its container is composed of any poisonous or deleterious substance that may render the contents injurious to health

1.2 Fair Packaging and Labeling Act, PL 89-755

The Fair Packaging and Labeling Act (“FPLA”) prohibits the distribution of any food item (except fresh fruit and vegetables) without a label. Labels must contain:

- a) the common or usual name of the Product
- b) the name and place of business of the manufacturer, packer, or distributor
- c) the net quantity of the contents
- d) the common or usual name of each ingredient, listed in descending order of prominence

Labels on donated Product can at times be ripped, torn, or illegible. Partner Food Banks may not distribute such Product unless it bears a label containing such information and the label is in English, legible, and complete. The purpose of requirements is to provide information to and protect consumers including those who are allergic to certain foods or on restricted diets.

1.3 Current Good Manufacturing Practices

The Current Good Manufacturing Practices for the Manufacturing, Processing, Packing, or Holding of Human Food (“GMPs”) are the regulations emanating from various statutes

that govern the handling and distribution of food, and are found in [21 CFR Part 117 Subpart B](#).

1.4 FDA Seafood HACCP Regulation

The Seafood Hazard Analysis Critical Control Point (HACCP) regulation, which can be found in [21 CFR Part 123](#), was created to ensure the safe handling and importing of seafood products in the United States. The regulation applies to Partner Food Banks that are handling and distributing any seafood Product (including canned, refrigerated, and frozen) as defined in the regulation.

2. Guidance Documents and Model Codes

Federal and industry leaders develop guidance documents and model codes to assist states and local health agencies in drafting laws and regulations on key food safety topics. Some states adopt the terms of guidance documents and model codes. Some such guidance documents contain provisions specific to nonprofit food operations, especially for salvage and food recovery. Partner Food Banks should adhere to those portions of the guidance and model codes listed below specific to their operations. Partner Food Banks should also be familiar with the guidance documents and model codes below and determine whether their local state or municipal entities have adopted any of the following:

- a) The [Model Consumer Commodity Salvage Code](#) from the Association of Food and Drug Officials outlines standards for operating a salvage facility.
- b) The [Food and Drug Administration Food Code](#) is a model code designed to safeguard public health and ensure food is unadulterated and honestly presented when offered to the consumer.
- c) The [Comprehensive Resource for Food Recovery Programs](#) is intended to assist all stakeholders involved in the recovery, distribution, or service of food to people facing hunger.
- d) The [Guidance Document for Direct-to-Consumer and Third-Party Delivery Service Food Delivery](#) from the Direct to Consumer Delivery Committee at the 2018-2020 Conference for Food Protection developed food safety best practices for managing or performing direct to consumer or third-party delivery services.

3. Third Party Food Safety Audit

3.1 Definition of Product Handling Facility

A Product Handling Facility is any location, owned or leased, managed by a member, that receives, handles, sorts, stores, or distributes Product to Distribution Partners as provided in **Appendix E**. Facilities with only direct distribution to people facing hunger such as a Partner Food Bank-run pantry are not Product Handling Facilities for the purpose of this Section 3.1.

3.2 Third Party Food Safety Audit Requirement

Each Partner Food Bank must pass a scored third party food safety audit a minimum of once every 2 years at all Product Handling Facilities. If a Partner Food Bank begins operating a new Product Handling Facility, it must pass a third party food safety audit within 1 year from when its starts operating in the new location. In the event that a Partner Food Bank is unable to pass a scored third party food safety audit within the required period, the Partner Food Bank is required to coordinate with FANO and establish a timeline for successful completion.

3.3 Third Party Food Safety Audit Reports

Partner Food Banks must authorize the third party auditing firm to provide FANO with a copy of the audit report or the Partner Food Bank must provide a copy of the completed scored audit to FANO within 30 days after the Partner Food Bank receives the audit report.

3.4 Third Party Food Safety Auditing Firm

If a Partner Food Bank chooses to use a third party food safety auditing firm that is not on the approved FANO list of alternate vendors for third party food safety audits, such Partner Food Bank must first receive written approval from FANO. Any future updates to the food safety standards utilized in the food safety audit that are not federal regulations must be approved by the National Council prior to implementation and published on HungerNet.

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B. Product Handling

This Section B sets out minimum requirements for Product handling.

1. Definitions

The following terms used in this **Appendix D** have these meanings:

- “Time/temperature control for safety (TCS) foods” means foods that require time or temperature control to limit pathogenic microorganism growth or toxin formation. Some examples of TCS foods include, without limitation, milk and dairy products, eggs, meat (beef, pork, and lamb), poultry, fish, shellfish and crustaceans, baked potatoes, tofu or other soy protein, sprouts and sprout seeds, sliced melons, cut tomatoes, and cut leafy greens.
- “Clean Room” means a separate, enclosed room for bulk/exposed food repacking which is designed to be easily cleaned and sanitized in a manner that reduces the risk of product contamination. The room may require regulatory approval and must be built to commercial food service/processing standards with durable, non-absorbent, and non-corrosive surfaces.

2. General Food Safety and Handling

GMPs require Partner Food Banks to conduct safe food handling, storage, distribution, and maintenance of their facilities with the goal of minimizing or eliminating the risk of contamination or adulteration. Partner Food Banks must determine and apply an appropriate course of action (e.g., refusal, isolation, segregation, labeling, and/or discarding) for any Product not meeting food safety and quality standards for safe storage and distribution. Any Product which is determined not to be safe upon receipt or during storage/handling must be appropriately segregated, isolated, or removed to prevent cross-contamination, cross-contact, or adulteration of other Product.

3. Receiving Standards

Partner Food Banks must have a written receiving program designed to ensure that Product is received in a safe manner. Product must be visually inspected upon receipt to ensure the following:

- a) proper labeling in accordance with the FPLA
- b) protected in food-safe packaging

- c) pest-free (no evidence of insects, rodents, birds, droppings, or urine)
- d) transported in a manner to prevent contamination or allergen cross-contact
- e) frozen food is frozen
- f) temperatures must be taken and documented for TCS foods to ensure the Product is being received at safe temperatures in accordance with applicable regulations

4. Product Handling and Storage Standards

4.1 Product Storage

Product must be stored off the floor and away from walls to facilitate cleaning and inspection.

4.2 Product Evaluation

Product must be inspected and evaluated, when necessary, to ensure that it: (a) is fit for human consumption; (b) meets applicable standards; and (c) is acceptable for distribution. Partner Food Banks must structure operations in accordance with the food sorting guidance in the Model Consumer Commodity Salvage Code as applicable and referenced in Section A.2 in this **Appendix D**.

4.3 Protection from Contamination

Precautions must be taken to protect Product from contamination including, without limitation:

- a) food-to-food (e.g., raw food separate from ready to eat food)
- b) food-to-surface-to-food
- c) employees and volunteers-to-food
- d) non-potable water-to-food
- e) chemicals-to-food (e.g., cleaning/disinfection products, pesticides)

4.4 Prevention of Allergen Cross-Contact

Food must be stored and handled in a way that prevents cross-contact with allergen foods (e.g., milk, dairy products, eggs, egg products, fish, shellfish, tree nuts, wheat, peanuts, soy, sesame).

4.5 Safe Holding Temperature

TCS foods must be stored at safe holding temperatures in accordance with applicable regulations.

4.6 Frozen Product

Frozen Product must be stored frozen.

4.7 Temperature Monitoring

The temperatures of all cold and freezer storage units must be monitored and recorded through either:

- a) continuous temperature recording device (automated)
- b) thermometer monitoring devices installed in the warmest section; monitored and recorded twice daily

For either option, the temperature recording devices must be calibrated at least annually and to a national standard.

5. Repacking Operation Standards

Partner Food Banks that repack bulk Product must ensure it is done in a safe and sanitary manner that meets applicable regulatory requirements. In line with that requirement, Partner Food Banks must:

- a) repack exposed, ready to eat foods in a Clean Room
- b) repack other Product as appropriate in a Clean Room or another isolated area with adequate food safety controls and operating practices to ensure Product safety
- c) repack frozen or refrigerated Product in a manner that ensures Product safety and adherence to time and temperature guidelines established by the food industry and/or regulatory agencies
- d) repack and process meat/poultry or other protein in accordance with federal (USDA), state, and local regulations and with additional labeling as required based on food type and intended use
- e) take adequate steps to prevent allergen cross-contact

For guidance on what foods are required to be repacked in a Clean Room, refer to the FANO Bulk Repack Guidance document.

6. Labeling Standards

6.1 Retail Consumer Packaged Foods

Labeling requirements for retail consumer packaged items must follow FPLA requirements as referenced in Section A.1.2 of this **Appendix D**.

6.2 Prepared Foods

Labeling for prepared foods, which typically originate with restaurant or food service sources, must contain:

- a) name and location of the Partner Food Bank or organization responsible for receiving and distributing the original donation
- b) name and location of the donor
- c) food description
- d) date of donation
- e) an allergen disclaimer statement that includes the following language: "Warning: This food that may contain, have come into contact with, or have been produced in a facility which also produces milk, eggs, peanuts, tree nuts (walnuts, almonds, pecans, hazelnuts/filberts, pistachios, cashews, coconuts, pine nuts, macadamia nuts, and/or Brazil nuts), fish, shellfish (crab, crawfish, lobster, shrimp, mussels, and/or oysters), wheat, soybeans, and/or sesame seeds."

Additional information is provided in the FANO Product Labeling Guidance document.

7. Product Specifics

7.1 Retail Food Establishment Donation Requirements:

The requirements set out in this Section 7.1 relate to Product donations (other than donations of whole Produce) from restaurants, caterers, hotels, and grocery and convenience stores.

- a) Donations must adhere to and be accepted under the following conditions:
 - i) provided by a regulated food business
 - ii) in compliance with federal, state, and local regulations
 - iii) TCS foods must be picked up at safe holding temperatures as outlined in the FANO Retail and Food Service Food Safety Guidelines
 - iv) receiving records must be maintained, including, without limitation, sample Product temperatures and visual inspection documentation
- b) Product must be:
 - i) picked up under safe storage conditions that prevent allergen cross-contact and are free from chemical, microbial, and physical contamination
 - ii) labeled completely as outlined in Sections A and B of this **Appendix D**
 - iii) received in accordance with Section B of this **Appendix D**
 - iv) packaged in first-use, food-grade packaging
 - v) food that has not been previously served to the public (such as food that has been on a self-service buffet or bulk food that is not protected from public exposure)
 - vi) first generation food (food prepared for the first time and not leftovers reheated for second-time service)

7.2 Over the Counter (OTC) Medications

- a) Partner Food Banks will be under no obligation to accept OTC medications.
- b) Partner Food Banks must determine and comply with any federal, state, or local restrictions or licensing requirements for the distribution of OTC medications. At a minimum, the Product must:
 - i) be within the Product expiration date
 - ii) have intact and readable labels, including common name of the drug, list of ingredients, net quantity of contents, potency per recommended dose, adequate directions for use, storage requirements (if any), control number, expiration date, name and address of responsible firm, and warnings
 - iii) have intact tamper-resistant packaging.

7.3 Vitamins and Supplements

Vitamins and dietary supplements are regulated by the FDA as food and therefore all requirements for food handling apply to their receipt and distribution.

7.4 Pet Food

Pet and other animal foods are subject to the same food safety and handling standards as human food. For additional guidance on handling pet food, refer to the FANO Safe Handling Guidelines for Pet Food document.

7.5 Cannabis Infused Products

The FDA currently prohibits cannabidiol (“CBD”) and tetrahydrocannabinol (“THC”) to be added to food and beverages sold in interstate commerce. Partner Food Banks may not distribute products that contain THC or CBD or other cannabinoids.

8. Kitchen Standards

Kitchens operated by Partner Food Banks that are used to produce food for the public must meet state and local food code requirements and applicable regulations. Kitchen operations must be under the direct supervision of a staff member or volunteer with a Food Protection Manager Certification as defined in Section C.2.4.

9. Third Party Storage and Production

Any facility storing, producing, or transforming Product for Partner Food Banks must adhere to the standards set out in this **Appendix D** as well as any applicable federal, state, and local laws and regulations not referenced in this **Appendix D**.

10. Shipping/Transportation Standards

Partner Food Banks must ensure that when they or their Distribution Partners are transporting Product, they do so in a manner that prevents contamination and adulteration. This includes, without limitation, the following requirements:

- a) TCS foods must be staged, transported, and held at temperatures appropriate to the relevant food item (e.g., safe temperatures for hot or cold TCS foods).
- b) When transporting TCS foods, Partner Food Banks must use a visible, active temperature retention system (e.g., refrigerated vehicle) or a passive temperature retention system (e.g., insulated coolers or bags, thermal blankets, cambros) for the safe transport of cold or hot food.
- c) All vehicles used for transporting Product must have clean food storage areas and be maintained to prevent contamination or adulteration of the transported Product.

11. Direct to Consumer Delivery

Partner Food Banks that are delivering Product directly to consumers must ensure the Product does not become unsafe during transportation and delivery. Partner Food Banks and their Distribution Partners must follow the requirements set out in the [Guidance Document for Direct-to-Consumer and Third-Party Delivery Service Food Delivery](#). Such requirements include:

- a) Partner Food Banks and their Distribution Partners must maintain temperature control of TCS foods during storage, transport, and delivery, including:
 - i) maintaining frozen foods frozen
 - ii) maintaining refrigerated foods at safe holding temperatures as outlined in the FANO Retail and Food Service Food Safety Guidelines
 - iii) documenting Product time and temperature

- b) Product must be packaged in a safe and sanitary manner, including, without limitation:
 - i) in sealed, moisture and tamper-resistant containers or packaging
 - ii) properly labeled as to source and contents as set forth in Section B.6 above
 - iii) with procedures in place to prevent and control contamination
- c) Partner Food Banks must provide food safety training and education to all staff and volunteers involved in the program as set out in Section C of this **Appendix D**.

Additional information may be found in the FANO Food Safety Guidance for Client Home Delivery document.

Related Network Guidance Documents:

- [National Product Donor Requirements Guide](#)
- [FANO Retail Grocery and Foodservice Food Safety Guidelines](#)
- [FANO Safe Handling Guidelines for Pet Food](#)
- [FANO Repacking Bulk Food – Food Safety Guidelines and Reference Chart](#)
- [Alternative Vendor List for GMP Food Safety Scored Audits](#)
- [FANO Food Safety Guidance for Client Home Delivery](#)
- [FANO Product Labeling Guidance](#)

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C. Food Safety Training

1. Overview

Food safety training is essential for organizations that handle and distribute Product to people facing hunger. This Section C first sets out definitions for food safety training levels and then defines what training is required for each function.

2. Training Definitions

2.1 Basic Food Safety Training

This is practical training and orientation provided by the Partner Food Bank to enable staff and volunteers to effectively perform the duties of their roles. Training curriculum or topics covered may include personal hygiene, hand washing, cleaning and sanitizing, temperature management of temperature-controlled foods, safety, cross contamination, proper labeling, product code dates, cross-contamination prevention, chemical safety, recalls, and food allergens.

2.2 ServSafe Food Handler for Food Banking or Equivalent

This includes the ServSafe Food Handler for Food Banking curriculum, or a Partner Food Bank-created food safety training curriculum that includes a verification of competency and covers at minimum the following topics: (a) importance of food safety; (b) biological, chemical, and physical hazards; (c) allergen control; (d) cross-contamination; (e) personal hygiene; (f) time and temperature control; (g) evaluating food; (h) repacking; (i) transportation; (j) cleaning and sanitizing; and (k) pest control.

2.3 Food Handler Training

This training verifies basic food safety knowledge and is for individuals in food handler positions that involve preparing or serving food at on-site feeding locations. Examples include: ServSafe Food Handler, SafeMark Food Handler, [National Registry of Food Safety Professionals](#), <http://www.statefoodsafety.com>, and [others](#).

2.4 Advanced Food Safety Training

This training exceeds the level of basic or minimum required training in one or more content areas. Topics in the advanced training curriculum may include: (a) food safety plan development; (b) food safety hazards (biological, chemical, physical, and economically motivated); (c) GMPs; (d) preventive controls (process, allergen, sanitation, and supplier); (e) traceability or recall procedures; (f) food defense and vulnerability assessment; and (g) integrated pest management. Examples include: HACCP, Seafood HACCP, Preventive Controls Qualified Individual (PCQI), and Food Defense Coordinator. Additional resources include, without limitation:

- a) Food Protection Manager Certification: [ServSafe](#) or other [ANSI-CFP accreditation programs](#)
- b) GMP Training:
 - [Food Protection for Warehouses and Distribution Centers: Food Defense](#)
 - [Institute for Food Safety at Cornell University: Good Manufacturing Practices](#)
 - [Online GMP Training - Warehouse and Distribution](#)
 - [NSF International Current Good Manufacturing Practices for Food Safety](#)

3. Required Trainings

3.1 Partner Food Bank, Affiliate Food Bank, and RDO Staff and Volunteers

For purposes of this section, references to RDOs mean RDOs that handle Product.

- a) Partner Food Bank, Affiliate Food Bank, and RDO staff and volunteers are required to have food safety training as outlined in Section C.4 below.
- b) All Partner Food Banks, Affiliate Food Banks, and RDOs are required to have a minimum of one staff member at each of their Product Handling Facilities with current certification as outlined in the advanced food safety training description in Section C.2. The staff member with this training must participate in or supervise the receiving, storage, and distribution of Product.

3.2 Agency Partners and Partner Food Bank Programs

- a) All Agency Partners and Partner Food Bank Programs are required to have a minimum of one staff member or volunteer with food safety training as outlined in Section C.4 below. That person must be a regular volunteer or staff member who picks up, transports and/or distributes food donations, or a person who supervises those activities. When trained staff or volunteers turn over, food safety training must be provided for the new person(s) within 60 days of their start date.
- b) Agency Partners or Partner Food Bank Programs that utilize food provided by the Partner Food Bank to make meals must have a staff member or volunteer with a Food Protection Manager Certification as defined in Section C.2.4.
- c) All other Agency Partner and Partner Food Bank Program staff or volunteers must have basic food safety training as defined in Section C.2 and described in Section C.4 below.

4. Training Detail

4.1 Required Training

This table sets out minimum required training by group and by activity. Partner Food Banks will comply with local regulations when such regulations require higher levels of training.

Group	Basic Food Safety Training	ServSafe Food Handler for Food Banking or Equivalent	Food Handler Training	Advanced Food Safety Training
1. Partner Food Bank, Affiliate Food Bank, and RDO staff (<i>minimum one per product handling facility</i>)				X
2. Partner Food Bank, Affiliate Food Bank, and RDO kitchen and food prep staff (<i>minimum one per product handling facility</i>)			X	
3. Partner Food Bank, Affiliate Food Bank, and RDO bulk repack or other food handling staff (<i>minimum one per product handling facility</i>)		X		
4. Partner Food Bank, Affiliate Food Bank, and RDO staff, including drivers, that handle retail or hospitality donations		X		
5. Temporary Disaster Feeding Partners (<i>minimum one Partner Food Bank Program representative per partner</i>)	X			
6. All other food handling volunteers at Partner Food Banks, Affiliate Food Banks, and RDOs	X			
7. Partner Food Bank, Affiliate Food Bank, or RDO staff or volunteers who monitor Agency Partners or Partner Food Bank Programs		X either option	X either option	
8. Partner Food Bank staff or volunteers who monitor Affiliate Food Banks or RDOs				X
9. Agency Partner and Partner Food Bank Program staff and volunteer leaders who handle distribution of TCS foods (<i>minimum one Agency Partner or Partner Food Bank Program representative per partner</i>)		X		
10. Agency Partner and Partner Food Bank Program staff and volunteer leaders for meal sites (<i>minimum one Agency Partner or</i>			X	

<i>Partner Food Bank Program representative per partner)</i>				
11. Agency Partner and Partner Food Bank Program staff and volunteer leaders who manage shelf stable product only (<i>minimum one Agency Partner or Partner Food Bank Program representative per partner</i>)	X			
12. All Agency Partner or Partner Food Bank Program staff or volunteers picking up, transporting, or delivering retail or hospitality donations		X		

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Related Network Guidance Resources:

- [ServSafe website showing food safety training requirements by state](#)
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D. Recalls

This Section D sets out Product recall protocols.

1. Definitions

1.1 Recall

Recalls are actions taken by a Product supplier to remove a potentially harmful Product from the market. For clarity, a recall does not include:

- a) a public health advisory (a warning or report giving information to the public about a potential public health threat)
- b) Product withdrawal (the voluntary removal or correction of a Product or ingredient that does not violate regulatory standards, but may not meet the company's quality standards)
- c) stock recovery

1.2 Recall Classifications

The following categories define removal from distribution channels of a consumer product or ingredient that could present a risk of illness, injury, or death and/or which a regulatory agency could otherwise consider to be in violation of a particular act and/or regulation:

- a) Class I Recall: Reasonable probability that the use of or exposure to the Product could cause serious adverse health consequences or result in death.
- b) Class II Recall: Use of or exposure to the Product may cause temporary or medically reversible adverse health consequences, or the probability of serious adverse health consequences is remote.
- c) Class III Recall: Use of or exposure to the Product is not likely to cause adverse health consequences.

2. Recall and Product Withdrawal Requirements

2.1 Recalls and Product Withdrawals - FANO Requirements

FANO will monitor recall and Product withdrawal notices from FDA, USDA, food manufacturers, and other external sources. Upon receipt of such notices and after any additional investigation, FANO will email a FANO recall notice for all Class I and II recalls to Partner Food Banks. FANO will also post recall notices on HungerNet. Partner Food Banks will review and evaluate all FANO recall and withdrawal notices to determine if further action is needed.

2.2 Recalls and Product Withdrawals - National Product Donors

FANO will announce recalls and Product withdrawals issued by National Product Donors in the same manner as described in Section 2.1.

2.3 Recalls and Product Withdrawals - Partner Food Bank Requirements

Partner Food Banks will:

- a) maintain a written recall and traceability program
- b) annually review and update the recall and traceability program(s)
- c) ensure at least one current Partner Food Bank staff member with responsibility for the tasks in this Section D.2.3 is signed up to receive emails for FANO recall notices
- d) maintain a system to identify, collect, and remove recalled or withdrawn Product from the Partner Food Bank's operations and Distribution Partners
- e) communicate recall and Product withdrawals to their Distribution Partners and people facing hunger, when possible
- f) respond to FANO within 72 hours, or other time frame stipulated by the donor, with the results of the recall and actions taken
- g) maintain and retain all recall and Product withdrawal records for a minimum of 2 years including:
 - i) recall and Product withdrawal notifications
 - ii) Product collection records (Product quantities removed and/or recovered)
 - iii) disposition records
 - iv) recall response reporting
 - v) corrective actions taken

2.4 Compliance with Donor Requirements

FANO and Partner Food Banks will return to donors or otherwise dispose of recalled or withheld Product (whether in transit or in their possession) in accordance with donor contracts or instructions including, without limitation, master product donation agreements entered into by FANO, and take such other steps as may be appropriate to comply with donor requirements.

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E. Product Recordkeeping and Inventory Requirements

This Section E outlines the minimum requirements for Product recordkeeping and inventory.

1. Inventory Recordkeeping System

Partner Food Banks will maintain an inventory recordkeeping system capable of:

- a) tracking Product distribution quickly in the event of a recall
- b) providing data needed by Product donors and the IRS for tax deduction purposes
- c) providing a current report of all inventory
- d) reconciling the inventory records of Product received, on hand, and distributed

2. Inventory Practices

Partner Food Banks will maintain accurate inventory records for the purposes outlined above. At minimum Partner Food Banks will adhere to the following requirements:

- a) Update current inventory on a daily basis, meaning that recording of receipts, distributions, and adjustments is usually completed within 1 business day.
- b) Maintain a system for organizing or labeling Product that facilitates inventory control, such as pallet tags, designated pallet locations, and other processes.
- c) Maintain physical inventory within +/- two percent (2%) of inventory system records. Accuracy refers to the count of items (such as cases, pounds, and eaches) and not the financial value of Product.
- d) Track and reconcile inventory records with distribution and stock-on-hand records and conduct regular test counts on Product, including:
 - i) documenting test counts
 - ii) applying test counts to all storage locations (dry, cooler, and frozen) and all Product sources (donated, purchased, government commodities) and moving through the Partner Food Bank's full inventory on a regular basis
 - iii) investigating and documenting findings of any material count discrepancies of inventory system records
 - iv) investigating material discrepancies through a documented process, developing and executing corrective actions, and regularly sharing results with the appropriate leadership
 - v) maintaining accurate records of all inventory adjustments including a reason or code for the inventory adjustment
- e) Record Product in pounds including those items tracked by case and unique identifiers such as item number, lot number, or pallet number.

3. Inventory Records

3.1 Minimum Standards

Partner Food Banks will maintain a record of all Product in their ownership and possession, including Product stored at off-site locations.

3.2 Information to be Recorded Upon Receipt

Partner Food Banks will record the following information upon receipt: (a) date received; (b) donor; (c) item number/category; (d) weight and quantity; and (e) FANO Product category.

3.3 Information to be Recorded at the Point of Distribution

Partner Food Banks will record the following information at the point of distribution: (a) date distributed; (b) item number/category; (c) weight and quantity; (d) FANO Product category; and (e) name of Distribution Partner or point of distribution.

4. Product Receiving Categories

Partner Food Banks will track Product received as follows:

Product Receiving Category	Description	Requirements
Category 1	Homogenous full pallets that are the same exact item or Stock Keeping Unit (SKU), from a single donor.	<p>Category 1 Product must be received and distributed with a unique inventory identification number (e.g. item number, lot number, pallet number, etc.).</p> <p>Category 1 Product being repackaged into other food parcels for distribution (e.g., emergency boxes, mixed product, bulk repack) must be able to be recalled in accordance with the Partner Food Bank's documented recall processes.</p> <p><i>Example: A full pallet of brand A tomato soup from donor B.</i></p>
Category 2	Mixed items or SKUs on the same pallet, from the same donor in a single donation (could be one or more pallets, or short/partial pallets).	<p>At a minimum all Product must be assigned a Product-specific assorted inventory number by donor, or a specific FANO Product category inventory number by donor.</p> <p>If a full homogenous pallet is received in the same donation with other mixed items, that full homogenous pallet must be treated as specified in Category 1.</p> <p><i>Examples: (1) A partial pallet of brand A tomato soup from donor B; (2) A mixed pallet of multiple varieties of soup from donor B; (3) A mixed pallet of snacks from donor C.</i></p>
Category 3	Mixed items received by the case or any method other than Category 1 or 2.	At a minimum, all mixed items must be assigned or compiled into a FANO Product Category.

Examples: (1) A mixed pallet of frozen dough, frozen pizza, and frozen vegetables from donor D; (2) A pallet of mixed salvage foods from foodservice donor E; (3) A partial pallet of mixed retail recovery foods from donor F grocery store or distribution center.

Produce	Fresh Produce (bulk or cased)	Fresh Produce may be received as Category 1, 2, or 3 Product regardless of how it is distributed.
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Related Network Guidance Documents:

- [FANO Product Category Descriptions](#)

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F. Product Acceptance, Reporting, and Receipting

This Section F sets out requirements relating to Product recordkeeping, acceptance, misuse, reporting, and donor receipting matters.

1. Definitions

The following terms used in this Section F have these meanings:

- “Enterprise Resource Planning System” or “ERP System” means an interface such as Ceres, Primarius, NetSuite, or other system used by a Partner Food Bank to manage inventory and Product donor interactions.
- “FANO Product Category” means specific designations for types of food and non-food as used for Product reporting in ERP Systems and the Platform (as defined in **Appendix C**). FANO maintains a list of FANO Product Categories and their descriptions on HungerNet.

2. Product Acceptance

Partner Food Banks have the right and responsibility to refuse any Product that could cause the Partner Food Bank to be in non-adherence to this Agreement or donor stipulations.

3. Product Misuse

Partner Food Banks and FANO will address Product misuse matters as follows:

- a) If a Partner Food Bank or FANO receives notice that Product in the Partner Food Bank’s inventory or previously distributed by the Partner Food Bank has been misused, the Partner Food Bank, in consultation with FANO, will develop an action plan to investigate the misuse and address the concerns.
- b) FANO will be available to advise the Partner Food Bank as necessary regarding investigation and resolution of Product misuse incidents.
- c) If, after reasonable investigation, FANO determines that the Partner Food Bank has not responded in a timely and effective manner to address the concerns, it

will contact the Partner Food Bank's CEO/Executive Director and Board Chair to notify them of the possibility of disciplinary action and FANO's assumption of negotiation and resolution responsibilities.

- d) Any financial restitution will be the responsibility of the Partner Food Bank.

Partner Food Banks and FANO will resolve disputes regarding a misuse matter in accordance with Section 16 (relationship management) of this Agreement.

4. Reporting of Product Received and Distributed

4.1 Use of ERP System

Partner Food Banks will record all Product received and distributed in an ERP System.

4.2 Reporting of Product Received

Partner Food Banks will report to FANO all Product received along with the information to be recorded upon receipt as described in Section E of this **Appendix D**. Partner Food Banks will report Product received in a timely manner and in any case no later than within 30 days of receipt.

4.3 Reporting of Product Distributed

Partner Food Banks will report to FANO, in accordance with the QPR reporting requirements outlined in **Appendix I**, all Product distributed. Partner Food Banks will report Product distributed in a timely manner and at least quarterly.

4.4 Donor Performance Reporting

FANO upon request of a Partner Food Bank will provide performance reports on National Product Donor (as defined in **Appendix C**) giving history by amount, type, and location.

5. Product Donor Tax Receipting

5.1 Local Product Donor Tax Receipting

Partner Food Banks will provide a tax receipt for Product received to eligible Local Product Donors at least annually or upon request. Local Product Donors are Product donors who are not a National Product Donor. Tax receipts must comply with Section 170(e)(3).

5.2 National Product Donor Tax Receipting

FANO will provide National Product Donors a consolidated Product donation tax receipt for tax filing purposes at least annually or upon request. Tax receipts must comply with Section 170(e)(3).

5.3 Section 170(e)(3) Receipting Requirements

The written statement for Local Product Donors and National Product Donors must:

- a) describe the donated Product received and list the date of receipt
- b) state that the Product will be used in compliance with IRS regulations governing Product donations including stating that the recipient organization will use the donated Product for care of the ill, needy, or infants and the donated Product will not otherwise be used, transferred, or distributed by the recipient organization in return for any money, property, or services that would disqualify it for treatment as a donation under Section 170(e)(3)
- c) state that the recipient organization is tax-exempt under Section 501(c)(3) of the Code and, therefore, qualifies to receive donations

- d) state that adequate records are maintained and are available to the IRS upon request
- e) be furnished within a reasonable period after the contribution, but not later than the date by which the donor is required to file a United States corporate income tax return for the year in which the contribution was made

Because a Product donor cannot always determine at the time of a donation whether they will take the special tax deduction for their donation, the Partner Food Bank must treat all Product donations as gifts that qualify for deduction under Section 170(e)(3) unless separately offered or solicited as described below in this **Appendix D**. Further information on this topic is provided in Section 9.3 of **Appendix C** and in Section B.2.2(d) of **Appendix E**.

5.4 Receipting Requirements for Product Solicited or Offered Outside of 170(e)(3)

Partner Food Banks that separately solicit or are offered Product specifically for fundraisers, events, staff use, or organizational upkeep must provide the donor with a separate receipt that acknowledges the donor has made a tax deductible gift and clearly communicates that the donor cannot take an enhanced tax deduction under Section 170(e)(3) because the Product was not used for serving the ill, needy, or infants. Partner Food Banks and Distribution Partners must keep copies of these separate receipts for Product solicited or offered outside of Section 170(e)(3) and have them available for inspection, as well as track those donations separately from Product donated for serving the ill, needy, or infants.

5.5 Books and Records

The books and records described in Section F.5.3(d) need not trace the receipt and disposition of specific items of donated Product if they disclose adherence with the requirements by reference to aggregate quantities of donated Product. The books and records are adequate if they reflect total amounts received and distributed (or used), and outline the procedure used for determining that the ultimate recipient of the donated Product is an ill or needy individual, or an infant.

Further information about Section 170(e)(3) is provided in Section L of **Appendix E**.

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Related Network Guidance Documents:

- [National Product Donor Requirements Guide](#)
- [NAR and QPR Late Submittal Policy](#)

Related Network Standards:

- Internal Use of Donated Products, Bartering or Selling Donated Product: Section B of **Appendix E** (product use and distribution partners)
- Product Withdrawal Requirements: Section D of **Appendix D** (product handling)
- Disaster Product Requirements: **Appendix H** (disaster services)

Appendix E Product Use and Distribution Partners

A. Introduction

1.1 Definitions

The following terms used in this **Appendix E** have these meanings:

- “Church” means an organization that meets a majority of the attributes considered by the IRS in determining whether an organization is a church for federal tax purposes and as substantiated by appropriate documentation. For clarity, the IRS treatment of an organization as a Church is not limited in terms of denomination, faith tradition, or religious practice.
- “Distribution Partners” means Agency Partners, Partner Food Bank Programs, Redistribution Organizations, Affiliate Food Banks, and Temporary Disaster Feeding Partners, all as defined in this **Appendix E**.
- “Donated Product” means Product donated for the purpose of serving the ill, needy, or infants in accordance with Section 170(e)(3).
- “Public Charity” means a nonprofit organization that is tax-exempt under Section 501(c)(3) of the Code and that is classified as a public charity under Section 509(a)(1) or (a)(2) of the Code.
- “Section 170(e)(3)” means the section of the Code relating to the deductibility of Product donations; it covers such topics as the organizations eligible to receive, and allowable uses of, such donations.

1.2 IRS Terminology

IRS terminology in the language of Section 170(e)(3) uses the phrase “ill, needy, or infants.” This Agreement uses that phrase only in relation to Section 170(e)(3) and only for purposes of conveying IRS requirements.

1.3 Distribution Partner Activities

This **Appendix E** sets out requirements relating to Distribution Partner activities such as use of Donated Product, service delivery, and recordkeeping. Partner Food Banks are required to communicate such requirements to Distribution Partners and, as provided in this **Appendix E**, enter into agreements with Distribution Partners reflecting such requirements, monitor adherence, and take appropriate corrective action as necessary.

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B. Product Use

1. Donated Product

1.1 Use of Donated Product

Partner Food Banks and Distribution Partners may use and distribute Donated Product only for the care of the ill, needy, or infants as contemplated by Section 170(e)(3) and only in the United States and Puerto Rico.

1.2 Distribution Generally

Partner Food Banks must distribute Donated Product to people facing hunger only through direct service or through Distribution Partners in accordance with this **Appendix E**.

1.3 Incidental Use / Self-Evident Need

Partner Food Banks may have Distribution Partners that serve both people facing hunger and others, all who qualify as ill and/or infants, or where overriding indicators of need are self-evident. Examples of such organizations include, without limitation, youth programs, camps, and childcare centers. Partner Food Banks must ensure that such Distribution Partners establish a priority system that assures that the primary program benefit is to people facing hunger, and that the program exclusively serves at least one of the ill, needy, or infant populations. All distributions must meet the more general and overriding requirement of Section 170(e)(3) that they be for charitable purposes.

1.4 No Selling or Bartering

Partner Food Banks and Distribution Partners may not sell or use Donated Product in exchange for money, other property, or services. Such activity is prohibited under Section 170(e)(3). Bartering includes use of Donated Product as an incentive to volunteer, or as an incentive for people facing hunger or partners to participate in programming, surveys, or activities not directly related to the distribution of Donated Product.

1.5 Recordkeeping

Distribution Partners must use reasonable efforts to maintain records reflecting the total amount of Donated Product received through the Partner Food Bank (including Product acquired through other Partner Food Bank-enabled programs such as retail store donation) and keep such records for at least 1 year after the date of receipt.

1.6 Procedures

Distribution Partners must disclose to the Partner Food Banks their procedures for determining that the final recipient of the Product is ill, needy, or an infant such as using self-declaration of need or other intake processes. However, Distribution Partners need not keep specific records of individual amounts distributed to specific recipients nor the names or addresses of those recipients.

1.7 Legal Compliance

Distribution Partners must ensure that all Donated Product from all sources (including store donation programs) conforms to any applicable provisions of the Food Drug & Cosmetic Act and other laws.

2. Internal Use of Donated Product

2.1 Overview

Donated Product is intended for the care of the ill, needy, or infants. Any incidental use must be limited and related to the primary purpose of the Partner Food Bank's or the Distribution Partner's charitable food distribution activities.

2.2 Limited Operational Use of Donated Product Solicited Under Section 170(e)(3)

Donated Product solicited and receipted under the requirements of Section 170(e)(3) may be used or consumed internally by staff or volunteers of Partner Food Banks and Distribution Partners only in the limited situations described below. Partner Food Banks must adopt written policies for each such situation.

- a) Partner Food Banks and Distribution Partners may permit staff or volunteers to consume or prepare Donated Product on a limited basis for taste testing and demonstration cooking.
- b) Partner Food Banks, Agency Partners, and Partner Food Bank Programs may permit staff and volunteers who are directly involved in the preparation of a meal or providing other services during a meal to consume Donated Product. The consumption of the meal should be part of staff or volunteer involvement with recipients (e.g., at the same tables and time as recipients are being served) and may be allowed only if it is incidental to the intended use of the Donated Product designated to serve the ill, needy, or infants. Staff or

volunteers working in other areas of the organization who are not directly interacting with recipients may not consume Donated Product.

- c) Partner Food Bank and Distribution Partner staff and volunteers may be eligible for Donated Product if they demonstrate need or illness consistent with Section 170(e)(3). Partner Food Bank and Distribution Partner staff or volunteers who are in need of food assistance must meet the same criteria used to determine eligibility for any recipient of Donated Product. Staff or volunteers, if meeting eligibility criteria, may not receive priority or different access to Donated Product.

2.3 Prohibited Operational Use of Donated Product Solicited Under Section 170(e)(3)

Partner Food Banks and Distribution Partners will not:

- a) use any non-food Donated Product in their operations or upkeep
- b) use any Donated Product for business meetings, including, without limitation, committee meetings and other functions where business is conducted relating to the Partner Food Bank or Distribution Partner(s)
- c) use Donated Product in connection with fundraisers or events
- d) consume any Donated Product (food or non-food), including consumption of beverages by volunteers when carrying out assigned duties, except as provided in Section 2.1
- e) use Donated Product to compensate or provide incentives to staff or volunteers

2.4 Operational Use of Product Solicited Outside of Section 170(e)(3)

Partner Food Banks and Distribution Partners may separately solicit Product specifically for fundraisers, events, or organizational upkeep. In such situations, and as set out in Section F.5.4 of **Appendix D**, Partner Food Banks and Distribution Partners must provide the donor with a separate receipt that acknowledges the donor has made a tax deductible gift and clearly communicates that the donor cannot take an enhanced tax deduction under Section 170(e)(3) because the Product will not be used for serving the ill, needy, or infants. Partner Food Banks and Distribution Partners must keep copies of separate receipts for Product solicited outside of Section 170(e)(3) and have them available for inspection, as well as track those donations separately from Product donated for serving the ill, needy, or infants.

2.5 Use of Donated Product in Disaster Response

Appendix H sets out information relating to use of Donated Product in disaster response.

3. Government Commodities

3.1 Definition

For purposes of this **Appendix E**, “government commodities” means foods distributed through USDA nutrition programs, including TEFAP, CSFP, and Food Distribution Programs on Indian Reservations.

3.2 Eligibility and Requirements

Federal requirements for USDA nutrition programs are established in 7 CFR Parts 247, 250, 251, 253, and 254. Eligibility standards and program requirements vary from state to state; Partner Food Banks should review the applicable state plan for information.

4. Purchased Product

4.1 Definition

“Purchased Product” means product purchased for distribution or sale.

4.2 Purchased Product Recipients

Partner Food Banks may distribute and/or sell Purchased Product to a broader range of end consumers because Purchased Product does not fall within the scope of Section 170(e)(3). Partner Food Banks may sell Purchased Product in their Service Areas to Distribution Partners, people facing hunger, external organizations that do not serve people facing hunger, and individuals who are not people facing hunger.

4.3 Pricing

Partner Food Bank may sell Purchased Product for no cost, below cost, at cost, or with a mark-up.

4.4 Reporting

Partner Food Banks must, in their reporting to FANO, distinguish Purchased Product that is ultimately distributed or sold to people facing hunger from Purchased Product that is sold to external organizations that do not serve people facing hunger or to individuals who are not people facing hunger. To that end:

- a) Partner Food Banks will report, as part of their regular reporting to FANO, any Purchased Product pounds distributed or sold in their Service Areas to people facing hunger.
- b) Partner Food Banks must exclude in their regular reporting to FANO any purchased Product pounds distributed or sold in their Service Area to either external organizations that do not serve people facing hunger or to people who are not facing hunger.

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C. Agency Partners

1. Definition

1.1. Agency Partner

Agency Partners operate hunger relief programs under their own organizational authority and in partnership with Partner Food Banks.

2. Eligibility

2.1 Public Charity or Church

For eligibility to distribute Donated Product, Agency Partners must be one of the following types of organizations:

- a) a Public Charity, or an organization wholly-owned by a Public Charity, that either:
 - (i) was organized for and operates for the purpose of the care of and service to the ill, needy, or infants or
 - (ii) uses Donated Product in a manner relating to and consistent with the organization’s exempt purpose through programs that care for and serve the ill, needy, or infants
- b) a Church that cares for or serves the ill, needy, and/or infants

For clarity, eligibility of a Church is not limited in terms of denomination, faith tradition, or religious practice.

2.2 Agency-Sponsored Programs

Partner Food Banks may permit an Agency Partner that is a Public Charity or a Church to designate another organization as its agent in distributing Donated Product to eligible

people. These arrangements (“Agency-Sponsored Programs”) must meet the following requirements:

- a) The Agency Partner must affirm such designation in writing, acknowledging the responsibility to enforce all provisions of its agreement with the Partner Food Bank with respect to the designated agent.
- b) The Agency Partner must be programmatically, fiscally, and legally responsible for the Donated Product handling and distribution activities of the designated agent.
- c) Funds used to pay handling fees assessed by the Partner Food Bank must come from the Agency Partner and not from the designated agent. All money received and disbursed in connection with handling and distribution of Donated Product must be carried out through and be reflected in the financial records of the Agency Partner.

2.3 Organizations that Serve Both People Facing Hunger and Others

For clarity, Agency Partners may be organizations that serve people facing hunger who qualify as ill and/or infants, or where overriding indicators of need are self-evident, and serve others. Such Agency Partners should adhere to the guidance set out in Section B.1.3 of this **Appendix E**.

2.4 Private Foundations and Foster Parent Associations Not Eligible

For clarity, private foundations (even though they are tax-exempt under Section 501(c)(3) of the Code) and foster parent associations are not eligible to become Agency Partners.

3. Written Agreement

Agency Partners and Partner Food Banks must be parties to a written agreement reflecting Agency Partner agreement to:

- a) receive, store, transfer, use, and handle Product safely and properly in accordance with applicable law
- b) comply with Section 170(e)(3) and other requirements for use and distribution of Donated Product as set out in this **Appendix E**
- c) adhere to additional donor stipulations
- d) comply with the policies, procedures, and recordkeeping requirements of the Partner Food Bank
- e) pay the handling fees assessed by the Partner Food Bank
- f) not engage in discrimination in the provision of service against any person because of race, color, citizenship, religion, gender, national origin, ancestry, age, marital status, disability, sexual orientation including gender identity or expression, unfavorable discharge from the military or status as a protected veteran or as otherwise prohibited under the current USDA nondiscrimination statement
- g) allow regular Partner Food Bank monitoring as contemplated by Section J of this **Appendix E**
- h) maintain a procedure for determining that the final recipient of the Donated Product is ill, needy, or an infant, such as using self-declarations of need or other intake processes
- i) acknowledge that all items are accepted in “as is” condition

- j) acknowledge that the original donor, the Partner Food Bank, and Feeding America offer no express warranties in relation to the Donated Product
- k) release the original donor, the Partner Food Bank, and Feeding America from any liabilities resulting from Donated Product
- l) hold harmless and indemnify the original donor, the Partner Food Bank, and Feeding America from any claims or obligations arising from Donated Product, Agency Partner conduct, or conditions or activities at Agency Partner locations

4. Required Files

Partner Food Banks must maintain files (hard copy or electronic) that contain:

- a) Clear, complete, and current evidence of the Agency Partner's status as a Public Charity or Church which may include:
 - i) Current IRS determination letter if the address on the letter matches the address of the organization listed on Partner Food Bank's agreement with the Agency Partner.
 - ii) Current group exemption letter documented by one of the following: (a) identification of the Agency Partner in the group exemption organization's directory; (b) a list of active local sites from the group exemption organization's national headquarters or regional office website; or (c) a letter from the national headquarters or regional office of the group exemption organization attesting that the Agency Partner is covered under their group exemption.
 - iii) Current listing of the Agency Partner under the Tax Exempt Organization Search section of the IRS website (Publication 78 data) relating to Public Charity status.
 - iv) Documentation that the Agency Partner meets a majority of the attributes considered by the IRS in determining whether an organization is a church for federal tax purposes.
- b) For Agency-Sponsored Programs, a letter from the CEO/Executive Director or Board Chair of the Agency Partner indicating that such Agency Partner is sponsoring such a program and assuming all responsibilities (fiscal and legal) for the sponsored organization. The Agency-Sponsored Program must provide both the sponsorship letter as well as clear, complete, and current evidence of the sponsoring organization's eligibility or Church status as required under Section 4(a).
- c) The current written agreement with the Agency Partner, signed and dated by an Agency Partner's authorized representative.
- d) The most recently completed monitoring reports as contemplated by Section J of this **Appendix E**.
- e) All significant correspondence between the Partner Food Bank and the Agency Partner including, without limitation, correspondence relating to Product recalls, changes in Agency Partner status, serious findings in a monitoring review, or actions taken due to Agency Partner non-adherence.
- f) Documentation of Agency Partner food safety training as contemplated by Section C.6.

5. Agency Monitoring

Partner Food Banks must monitor each Agency Partner on-site at least once every 2 years in accordance with Section J of this **Appendix E**.

6. Food Safety Training

Partner Food Banks must confirm that each Agency Partner has carried out and has documentation of current required food safety training. Such food safety requirements are set out in Section C of **Appendix D**.

Related Network Guidance Documents:

- [Tax Exempt Organization Search page on IRS website](#)

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D. Partner Food Bank Programs

1. Definition and Basic Features

1.1 Partner Food Bank Program

“Partner Food Bank Program” means any hunger relief program operated at or in conjunction with a Host Site under the Partner Food Bank’s Public Charity status. A “Host Site” is a nonprofit, for-profit, municipality, educational institution, or other organization.

1.2 Responsibility

Partner Food Bank Programs are considered to be operating under the fiscal and legal responsibility of the Partner Food Bank’s organization and status as a Public Charity.

1.3 Host Sites and Fees

Partner Food Banks may not assess Host Sites any fees associated with receipt or distribution of Donated Product. Partner Food Banks may allocate program operational costs for internal accounting purposes.

2. Written Agreement

Host Sites and Partner Food Banks must be parties to a written agreement reflecting Host Site agreement to:

- receive, store, transfer, use, and handle Product safely and properly in accordance with applicable law
- comply with Section 170(e)(3) and other requirements for use and distribution of Donated Product as set out in this **Appendix E**
- comply with the policies, procedures, and record keeping requirements of the Partner Food Bank
- not engage in discrimination in the provision of service against any person because of race, color, citizenship, religion, gender, national origin, ancestry, age, marital status, disability, sexual orientation including gender identity or expression, unfavorable discharge from the military or status as a protected veteran or as otherwise prohibited under the current USDA nondiscrimination statement
- allow regular Partner Food Bank monitoring as contemplated by Section J of this **Appendix E**

- f) maintain a procedure for determining that the final recipient of the Donated Product is ill, needy, or an infant, such as using self-declarations of need or other intake processes
- g) acknowledge that the original donor, the Partner Food Bank, and Feeding America offer no express warranties in relation to the Donated Product
- h) release the original donor, the Partner Food Bank, and Feeding America from any liabilities resulting from Donated Product
- i) hold harmless and indemnify the Partner Food Bank and Feeding America from any claims or obligations arising from Host Site conduct or conditions or activities at Host Site locations

3. Required Files

Partner Food Banks must maintain program files (hard copy or electronic) for all Host Sites. Those Partner Food Bank Program files must contain:

- a) The current written agreement with the Host Site, signed and dated by a Host Site’s authorized representative.
- b) The most recently completed monitoring reports as contemplated by Section J of this **Appendix E**.
- c) All significant correspondence between the Partner Food Bank and the Host Site including, without limitation, correspondence relating to Product recalls, changes in Host Site status, serious findings in a monitoring review, or actions taken due to Host Site non-adherence.
- d) Documentation of food safety training as contemplated by Section D.5 of this **Appendix E**.

4. Monitoring

Partner Food Banks must monitor each Host Site on-site at least once every 2 years in accordance with Section J of this **Appendix E**.

5. Food Safety Training

Partner Food Banks must demonstrate that each Host Site has carried out and has documentation of current required food safety training. Such food safety requirements are set out in Section C of **Appendix D**.

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E. Redistribution Organizations

1. Overview

1.1 Definition and Eligibility

An RDO must:

- a) meet the eligibility requirements set out in Section 4 of **Appendix F**
- b) operate a hunger relief program under its own organizational authority

- c) be physically located within the Partner Food Bank's Service Area
- d) provide the food banking services set out in Section F.1.2 in a defined geographic area within such Service Area under contract with the Partner Food Bank

1.2 Primary Functions of an RDO

An RDO must carry out one or more of these functions:

- a) distribution and redistribution of Product to other Distribution Partners on a regular and ongoing basis in Partner Food Bank's Service Area
- b) providing Distribution Partner management for a geographically defined area of service or defined set of Distribution Partners
- c) sourcing Product from a geographically defined area or specified program

RDOs and Partner Food Banks may agree to share responsibility for specific areas or activities.

2. Network Charter and Operational Agreement

2.1 Network Charter

RDOs must sign the Network Charter. The Board Chair and CEO/Executive Director of an RDO must sign the Network Charter on behalf of the organization.

2.2 Operational Agreement

RDOs and Partner Food Banks must be parties to an Operational Agreement ("Redistribution Organization Agreement" or "RDO Agreement") reflecting RDO agreement to:

- a) carry out a defined set of activities
- b) receive, store, transfer, use, and handle Product safely and properly in accordance with applicable law
- c) comply with Section 170(e)(3) and other requirements for use and distribution as set out in this **Appendix E**
- d) as applicable, adhere to additional donor stipulations
- e) acknowledge that the original donor, the Partner Food Bank, and Feeding America offer no express warranties in relation to the Donated Product
- f) release the original donor, the Partner Food Bank, and Feeding America from any liabilities resulting from Donated Product
- g) hold harmless and indemnify the original donor, the Partner Food Bank, and Feeding America from any claims or obligations arising from Donated Product, RDO conduct, or conditions or activities at RDO locations
- h) not engage in discrimination in the provision of service against any person because of race, color, citizenship, religion, gender, national origin, ancestry, age, marital status, disability, sexual orientation including gender identity or expression, unfavorable discharge from the military or status as a protected veteran or as otherwise prohibited under the current USDA nondiscrimination statement

- i) allow regular Partner Food Bank monitoring as contemplated by Section J of this **Appendix E**
- j) pay the handling fees assessed by the Partner Food Bank
- k) assess handling fees, as applicable, to Agency Partners, Affiliate Food Banks, Partner Food Banks, and other RDOs as set out in Section K of this **Appendix E**
- l) collaborate with Partner Food Bank in carrying out disaster service activities
- m) collaborate with Partner Food Bank as appropriate in Partner Food Bank's preparation of Service Area Assessments, Operational Response Plans, and Product Sourcing Plans
- n) take appropriate administrative and technical measures designed to protect individual privacy and data confidentiality and security
- o) notify Partner Food Bank of any development that has or could have a material adverse effect on its financial condition or otherwise materially affect its ability to carry out its operations

In addition:

- p) The RDO Agreement must state Partner Food Bank Responsibilities to the RDO as set forth below.
- q) The CEO/Executive Director of each of the Partner Food Bank and RDO must sign the RDO Agreement.
- r) A Partner Food Bank and RDO may agree to additional terms so long as such additional terms do not conflict with the Network Charter or this **Appendix E**.

3. Partner Food Bank Responsibilities

3.1 Relationship with RDOs

Partner Food Banks will:

- a) Treat RDOs as partners, in a manner consistent with the Network Charter, working with unity of purpose toward the common goal of maximizing the provision of safe and nutritious food resources to people facing hunger.
- b) Collaborate with RDOs at the local level, coordinating services, sharing resources, and providing mutual support to best meet the needs of people facing hunger, with such actions including:
 - i) providing functional integration of each RDO into the Partner Food Bank's work
 - ii) as applicable, procuring and distributing Product through a process agreed upon by the Partner Food Bank and the RDO
 - iii) providing technical assistance to the RDO on relevant operational matters
 - iv) collaborate with RDOs as appropriate in preparing Service Area Assessments and Operational Response Plans as contemplated by **Appendix B**, and in preparing Product Sourcing Plans as contemplated by **Appendix C**

- v) visiting RDOs regularly and conducting a Network Standards Review every other year as contemplated by Section E.4
- c) Maintain and devote adequate resources to fulfill the Partner Food Bank obligations under this Agreement and the RDO Agreement.
- d) Facilitate, as applicable, the RDO response to disasters as described in **Appendix H**.
- e) Inform and engage FANO in the relationship with the RDO including:
 - i) providing FANO with a copy of new and revised RDO Agreements
 - ii) informing FANO of any dispute resolution proceedings being undertaken between Partner Food Bank and RDO, notifying FANO of any corrective action, and notifying FANO of any termination of the RDO Agreement

3.2 Required Files

Partner Food Banks will maintain RDO files that include:

- a) clear, complete and current evidence of the RDO's exemption as a Public Charity, wholly-owned subsidiary of a Public Charity, or Church, which may include:
 - i) Current IRS determination letter if the address on the letter matches the address of the organization listed on the RDO Agreement.
 - ii) Current group exemption letter documented by one of the following: (a) identification of the RDO in the group exemption organization's directory; (b) a list of active local sites from the group exemption organization's national headquarters or regional office website; or (c) a letter from the national headquarters or regional office of the group exemption organization attesting that the RDO is covered under their group exemption.
 - iii) Current listing of the RDO under the Tax Exempt Organization Search section of the IRS website (Publication 78 data) relating to Public Charity status.
 - iv) Documentation that the RDO meets a majority of the attributes considered by the IRS in determining whether an organization is a church for federal tax purposes.
- b) a current RDO Agreement signed as required by the CEO/Executive Director of both the Partner Food Bank and the RDO
- c) current and completed monitoring reports
- d) all significant correspondence between the Partner Food Bank and the RDO such as Product recalls, changes in RDO status, serious findings or actions taken due to non-adherence

4. Monitoring Visits

Partner Food Banks must monitor each RDO on-site at least once every 2 years in accordance with Section J of this **Appendix E**.

5. Food Safety Training

Partner Food Banks must demonstrate that each RDO has carried out and has documentation of current required food safety training. See Section C of **Appendix D** for safety training requirements.

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F. Affiliate Food Banks

1. Overview

1.1 Definition and Eligibility

An Affiliate Food Bank must:

- a) meet the eligibility requirements set out in Section 4 of **Appendix F**
- b) operate a hunger relief program under its own organizational authority
- c) be physically located within the Partner Food Bank's Service Area
- d) provide the food banking services set out in this Section F.1.2 in a defined geographic area within such Service Area under contract with the Partner Food Bank

A Partner Food Bank is responsible, through its activities and those of its Affiliate Food Banks, for meeting the Partner Food Bank's obligations under this Agreement with respect to its entire Service Area.

1.2 Primary Functions of an Affiliate Food Bank

An Affiliate Food Bank fulfills the following primary food banking functions in its area of service:

- a) direct distribution of Product to people facing hunger and redistribution of Product to Agency Partners and Affiliate Food Bank Programs on a regular and ongoing basis
- b) sourcing Product
- c) Agency Partner and Affiliate Food Bank Program interaction in its area of service or for a defined set of such organizations
- d) fundraising for hunger-related activities
- e) media and community relations for hunger-related activities

The Affiliate Food Bank is the organization primarily responsible for performing such functions; Affiliate Food Banks and Partner Food Banks, however, may agree to share responsibility for specific areas or activities.

1.3 Affiliate Food Bank Program

"Affiliate Food Bank Program" means any hunger relief program operated at or in conjunction with a Host Site under the Affiliate Food Bank's Public Charity status.

2. Charter and Operational Agreement

2.1 Network Charter

Affiliate Food Banks must sign the Network Charter. The Board Chair and CEO/Executive Director of an Affiliate Food Bank must sign the Network Charter on behalf of the organization.

2.2 Operational Agreement

Partner Food Banks and each of their Affiliate Food Banks must be party to an Operational Agreement as follows:

- a) Such agreement must be the 2023 Affiliate Food Bank Agreement template provided by FANO to Partner Food Banks.
- b) The Board Chair and CEO/Executive Director of each of the Partner Food Bank and Affiliate Food Bank must sign the Agreement.
- c) A Partner Food Bank and Affiliate Food Bank may agree to additional terms so long as such additional terms do not conflict with the Network Charter or the 2023 Affiliate Food Bank Agreement template.

3. Partner Food Bank Responsibilities

3.1 Relationship with Affiliate Food Bank

Partner Food Banks will:

- c) Treat Affiliate Food Banks as partners, in a manner consistent with the Network Charter, working with unity of purpose toward the common goal of maximizing the provision of safe and nutritious food resources to people facing hunger.
- d) Collaborate with Affiliate Food Banks at the local level, coordinating services, sharing resources, and providing mutual support to best meet the needs of people facing hunger, with such actions including:
 - vi) providing functional integration of each Affiliate Food Bank into the Partner Food Bank's work
 - vii) procuring Product and maintaining an allocation system agreed upon by the Partner Food Bank and the Affiliate Food Bank
 - viii) providing technical assistance to the Affiliate Food Bank on operational matters
 - ix) disclosing how Affiliate Food Bank activities are reflected in reporting by Partner Food Bank to FANO
 - x) collaborating with Affiliate Food Banks in preparing Service Area Assessments and Operational Response Plans as contemplated by **Appendix B** and Product Sourcing Plans as contemplated by **Appendix C**
 - xi) sharing cause marketing funds with Affiliate Food Banks originating from the zip codes in the Affiliate Food Bank's area of service (strongly encouraged, not required)
 - xii) providing Affiliate Food Banks and FANO with reports detailing the Partner Food Bank's support of the Affiliate Food Bank, including data on fees and amounts Affiliate Food Banks are paying to the Partner Food Bank and what benefits (e.g., food, funds, equipment, supplies) Affiliate Food Banks are receiving from the Partner Food Bank
 - xiii) visiting Affiliate Food Banks regularly and conducting a Network Standards Review every 2 years as contemplated by Section F.4
 - xiv) responding promptly to requests for approval of applications by the Affiliate Food Bank, whether on an annual or case-by-case basis, for grants and other investments by FANO as contemplated by **Appendix L**

- f) Maintain and devote adequate resources to fulfill the Partner Food Bank's obligations under this Agreement and the Affiliate Food Bank Agreement.
- g) Facilitate, as applicable, the Affiliate Food Bank response to disasters as described in **Appendix H**.
- h) Inform and engage FANO in the relationship with the Affiliate Food Bank including:
 - i) providing FANO with a copy of new and revised Affiliate Food Bank Agreements
 - ii) inviting FANO staff to visit Affiliate Food Banks, and facilitating communication between FANO and Affiliate Food Banks by providing current contact information
 - iii) informing FANO of any dispute resolution processes being undertaken between the Partner Food Bank and Affiliate Food Bank, and providing FANO with written notification of any corrective action undertaken by an Affiliate Food Bank

3.2 Required Files

Partner Food Banks will maintain Affiliate Food Bank files that include:

- e) clear, complete and current evidence of the Affiliate Food Bank's exemption as a Public Charity or Church, which may include:
 - i) Current IRS determination letter if the address on the letter matches the address of the organization listed on Partner Food Bank's agreement with the Affiliate Food Bank.
 - ii) Current group exemption letter documented by one of the following: (a) identification of the Affiliate Food Bank in the group exemption organization's directory; (b) a list of active local sites from the group exemption organization's national headquarters or regional office website; or (c) a letter from the national headquarters or regional office of the group exemption organization attesting that the Affiliate Food Bank is covered under their group exemption.
 - iii) Current listing of the Affiliate Food Bank under the Tax Exempt Organization Search section of the IRS website (Publication 78 data) relating to Public Charity status.
 - iv) Documentation that the Affiliate Food Bank meets a majority of the attributes considered by the IRS in determining whether an organization is a church for federal tax purposes.
- f) current Affiliate Food Bank Agreement signed as required by the Board Chair and CEO/Executive Director of both the Partner Food Bank and the Affiliate Food Bank
- g) current and completed monitoring reports
- h) all significant correspondence between the Partner Food Bank and the Affiliate Food Bank such as Product recalls, changes in Affiliate Food Bank status, serious findings, or corrective actions taken due to non-adherence

4. Network Standards Reviews

4.1 Network Standards Reviews

Partner Food Banks will carry out Affiliate Food Bank on-site monitoring visits every 2 years as provided in the Affiliate Food Bank Agreement. Partner Food Banks will:

- a) Evaluate Affiliate Food Bank adherence to relevant Affiliate Food Bank requirements.
- b) Monitor relevant laws and regulations for changes and timely advise Affiliate Food Banks of developments with such laws and regulations.
- c) Provide the Affiliate Food Bank, at the time of each review, a report regarding the adequacy of service in the Affiliate Food Bank's area of service as contemplated by **Appendix B** and Section 17 of this Agreement.
- d) Provide the Affiliate Food Bank with a written report of its findings to the Partner Food Bank CEO/Executive Director and Board Chair within 30 days after completion of the review.

4.2 Food Safety Training for Individuals Conducting Monitoring Visits

Partner Food Bank staff or volunteers who conduct monitoring of Affiliate Food Banks must have an appropriate level of food safety knowledge that is relevant to such Affiliate Food Bank's operations as set out in Section C of **Appendix D**.

5. Path to Partner Food Bank Designation

5.1 Process

An Affiliate Food Bank may pursue a path to Partner Food Bank designation in accordance with the process set out in this Section F.5.

5.2 Decision Regarding Review Process Commencement

The process will begin by the Affiliate Food Bank notifying its Partner Food Bank and FANO of its interest in seeking Partner Food Bank designation. Partner Food Bank and FANO will then notify Affiliate Food Bank and each other of whether it supports commencement of the formal review process. The parties will then proceed as follows:

- a) If the Affiliate Food Bank, Partner Food Bank, and FANO all agree that such course of action would best serve people facing hunger, the three parties will engage in a formal review and approval process.
- b) If the Partner Food Bank does not support going forward, Affiliate Food Bank may as it determines take such dispute resolutions actions as are provided under its Affiliate Food Bank Agreement with Partner Food Bank.
- c) If Partner Food Bank supports going forward but FANO does not, FANO will make itself available to meet and discuss the matter. If after such meeting there is still no agreement among all three parties, the Partner Food Bank and Affiliate Food Bank may, if they so agree, jointly take their concerns to the National Council. The National Council may take such actions and make such determinations as it determines appropriate, including directing the parties to continue discussions, accepting FANO's conclusion that the review and approval process should not begin at such time, or directing FANO to engage in such process. The decision of the National Council will be final.

5.3 Change in Designation

If, on the basis of the review, it is determined that Affiliate Food Bank should be designated as a Partner Food Bank, the transition will move forward in accordance with a timeline and plan agreed among the Affiliate Food Bank, Partner Food Bank, and FANO.

5.4 No Change in Designation; Reapplication

If, on the basis of the review, the designation does not change and the Affiliate Food Bank does not become a Partner Food Bank, the Affiliate Food Bank may not appeal the review outcome to the National Council or through the relationship management process contemplated by **Appendix M**, but will be free to again seek Partner Food Bank designation at a later date.

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Related Network Guidance Documents:

- [Affiliate Food Bank HungerNet page](#)
 - 2023 Affiliate Food Bank Agreement template (forthcoming)
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G. Temporary Disaster Feeding Partner

1.1 Definition

“Temporary Disaster Feeding Partner” means a temporary Partner Food Bank Program added under a declared state of emergency and/or added under a local, public emergency to respond to a disaster occurring within and/or adjacent to a Partner Food Bank’s Service Area. Temporary Disaster Feeding Partners are intended to serve as an expedited means of expanding distribution in times of disaster.

1.2 Eligibility

An organization is eligible to be a Temporary Disaster Feeding Partner if it meets the eligibility requirements to be a Partner Food Bank Program. A Partner Food Bank must, within 12 months from the commencement of an organization’s Temporary Disaster Feeding Partner status, either: (a) transition such Temporary Disaster Feeding Partner to permanent Partner Food Bank Program status, as the case may be; or (b) end its status as a Temporary Disaster Feeding Partner.

1.3 Written Agreement

Temporary Disaster Feeding Partners and Partner Food Banks must be parties to a written agreement reflecting Temporary Disaster Feeding Partner agreement to:

- a) receive, store, transfer, use, and handle Product safely and properly in accordance with applicable law
- b) comply with Section 170(e)(3) and other requirements for use and distribution of Donated Product as set out in this **Appendix E**
- c) comply with the policies, procedures, and record keeping requirements of the Partner Food Bank applicable to Temporary Disaster Feeding Partners
- d) not engage in discrimination in the provision of service against any person because of race, color, citizenship, religion, gender, national origin, ancestry, age, marital status, disability, sexual orientation including gender identity or expression, unfavorable discharge from the military or status as a protected veteran or as otherwise prohibited under the current USDA nondiscrimination statement

- e) allow Partner Food Bank monitoring as contemplated by Section J of this **Appendix E** during the 12-month period of Temporary Disaster Feeding Partner status
- f) maintain a procedure for determining that the final recipient of the Donated Product is ill, needy, or an infant, such as using self-declarations of need or other intake processes
- g) acknowledge that the original donor, the Partner Food Bank, and Feeding America offer no express warranties in relation to the Donated Product
- h) release the original donor, the Partner Food Bank, and Feeding America from any liabilities resulting from Donated Product
- i) hold harmless and indemnify the Partner Food Bank and Feeding America from any claims or obligations arising from Temporary Disaster Feeding Partner conduct or conditions or activities at Temporary Disaster Feeding Partner locations

1.4 Required Files

Partner Food Banks must maintain Temporary Disaster Feeding Partner files (hard copy or electronic) that contain:

- a) Current written agreement with the Temporary Disaster Feeding Partner, signed and dated by a Temporary Disaster Feeding Partner authorized representative.
- b) All significant correspondence between the Partner Food Bank and the Temporary Disaster Feeding Partner.
- c) Documentation of required food safety training as set out in Section C of **Appendix D**.
- d) Documentation of pre-distribution monitoring (if applicable).

1.5 Pre-Distribution Monitoring

Partner Food Banks will make reasonable efforts to evaluate and document a Temporary Disaster Feeding Partner’s distribution site and storage facilities for food safety, either virtually or in-person, prior to initial distribution of Product to the Temporary Disaster Feeding Partner.

1.6 Food Safety Training

At least one staff member or volunteer of the Temporary Disaster Feeding Partner must complete required food safety training, as set out in Section C of **Appendix D**, as soon as reasonably possible following establishment of the Temporary Disaster Feeding Partner.

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H. Sub-Distribution and Enabled Donor Pick-up Program

1. Sub-Distribution

1.1 Definition and Eligibility

Partner Food Banks may permit selected Agency Partners and Partner Food Bank Programs to sub-distribute excess Product obtained from or enabled by the Partner Food Bank to other approved Agency Partners or Partner Food Bank Programs if:

- a) The Product being sub-distributed is in excess of what the Distribution Partner will be able to distribute and needs to be sub-distributed to maintain quality and/or be distributed while it is safe for human consumption.
- b) The Product is only sub-distributed once, and only to Distribution Partners who are in good standing.
- c) Partner Food Banks maintain a process for notifying sub-distributing Distribution Partners of any changes to the status of the entities receiving sub-distributed Product.

1.2 Written Agreement

Partner Food Banks and any sub-distributing Distribution Partner must be parties to a written agreement reflecting Distribution Partner agreement to:

- a) handle and distribute all sub-distributed Product in accordance with its primary signed Agency Partner or Partner Food Bank Program Agreement
- b) only sub-distribute Product once and only to other Distribution Partners approved by Partner Food Bank
- c) track all sub-distributed Product to ensure Product is able to be recalled in accordance with the Partner Food Bank's recall program
- d) take and document sample temperatures at the time of pickup and delivery for all TCS foods
- e) not charge fees in relation to sub-distributed Product (prohibited fees include: VAP and PPO; handling; delivery, transfer, and referral; and any other fees)
- f) adhere to Product integrity and food safety procedures at all times including during the transfer of Product
- g) report unsafe food handling and transportation practices to the Partner Food Bank

Such written agreement must also recite that Product to be sub-distributed is in excess of what the Distribution Partner will distribute and needs to be sub-distributed to maintain quality and/or be distributed while it is safe for human consumption.

1.3 Monitoring

Partner Food Banks will review sub-distribution activities as part of Agency Partner or Partner Food Bank Program monitoring as set out in Section J of this **Appendix E**.

1.4 Food Safety Training

All Distribution Partner staff or volunteers who handle Product as a part of a sub-distribution program must complete current required food safety training as set out in Section C of **Appendix D**.

2. Agency-Enabled Donor Pick-up Program

2.1 Definition and Eligibility

Partner Food Banks may permit select Distribution Partners to pick up Product donations on the Partner Food Bank's behalf for approved donors in their Service Area.

2.2 Requirements

Partner Food Banks and any Distribution Partners participating in such program must be parties to a written agreement reflecting such Distribution Partner’s agreement to:

- a) handle and distribute all Product obtained through the program in adherence with their primary signed Agency Partner agreement or Partner Food Bank Program agreement
- b) provide a point of contact for the Partner Food Bank and the donor site to call for pick-up, scheduling, or other needs, and notify the Partner Food Bank when contact information changes
- c) transport frozen and refrigerated Product using approved devices to maintain safe food temperatures including, for example, passive temperature control devices such as coolers and thermal blankets, or active temperature control devices such as a refrigerated vehicle or refrigeration unit
- d) take and document sample temperatures for all frozen and refrigerated Product at the time of pickup and again at the delivery site
- e) pick up Product on the days and times agreed upon with the Partner Food Bank and the donor
- f) contact the Partner Food Bank regarding any issues that arise with donors
- g) document the weight, and, if required by the donor, product type and location of each pick-up, and accurately report this information to the Partner Food Bank no later than 30 days after each pick-up
- h) work in partnership with the Partner Food Bank and any other approved Distribution Partners assigned to the same donor, if applicable
- i) appropriately represent the Partner Food Bank and the Network to the donor
- j) ensure that all staff or volunteers who handle Product have required food safety training as contemplated by Section H.2.4
- k) adhere to Partner Food Bank policies and procedures provided to Distribution Partner in training and other materials

2.3 Monitoring

Partner Food Banks will review program-specific requirements during Agency Partner or Partner Food Bank Program monitoring as set out in Section J of this **Appendix E**.

2.4 Food Safety Training

Distribution Partner staff or volunteers who handle Product in connection with the program must complete required food safety training as set out in Section C of **Appendix D**.

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I. Partner Food Banks Serving Children

1.1 Background Check Policy

Partner Food Banks that serve children must maintain a policy regarding background checks for staff and volunteers. Such policy must provide that:

- a) staff and volunteers who have direct, repetitive, and/or unsupervised contact with children must undergo background checks

- b) no individual whose background check reveals any convictions of offenses against children may interact with children in a staff or volunteer capacity
- c) volunteer involvement of any one-time or non-regular volunteer who has not been subject to a background check must be limited strictly to open and supervised activities with children

Such policy must also reflect the Partner Food Bank's determinations regarding the appropriate background check for each such situation and the frequency and nature of updated background checks.

1.2 Applicable Law; Individual Privacy

Partner Food Banks will comply with applicable law in serving children and carrying out and maintaining records of such background checks. Subject to applicable law, Partner Food Banks will adhere to the standards of **Appendix I** regarding protection of individual and other data relating to such activities and obtained through background checks.

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J. Monitoring Distribution Partners

1. Agency Partner, Partner Food Bank Program, and RDO Monitoring

1.1 Agency Partner Monitoring

Partner Food Banks must carry out on-site reviews of each Agency Partner at least once every 2 years. Reviews should include, at minimum, the following topics:

- a) food safety including applicable sections of **Appendix D** and state and local food safety regulations
- b) food safety training (Section C of **Appendix D**)
- c) Agency Partner eligibility (Section C of this **Appendix E**)
- d) use of Product and Section 170(e)(3) compliance (Section B of this **Appendix E**)
- e) IRS receipting requirements (Section F of **Appendix D**)
- f) service delivery to people facing hunger including adherence to USDA nondiscrimination requirements
- g) other local and state regulations, as evidenced by inspection reports and licenses issued by those authorities
- h) additional requirements related to specific Distribution Partner activities

1.2 Partner Food Bank Program Monitoring

Partner Food Banks must carry out on-site reviews of each Partner Food Bank Program at least once every 2 years. Reviews should include, at minimum, the following topics:

- a) food safety, including applicable sections of **Appendix D** and state and local food safety regulations
- b) food safety training (Section C of **Appendix D**)
- c) use of Product (Section B of this **Appendix E**)

- d) service delivery to people facing hunger including adherence to USDA non-discrimination requirements
- e) other local and state regulations, as evidenced by inspection reports and licenses issued by those authorities
- f) additional requirements related to specific Distribution Partner activities

1.3 RDO Monitoring

Partner Food Banks must carry out on-site reviews of each RDO at least once every 2 years. Reviews should include, at minimum, the following topics:

- a) food safety including applicable sections of **Appendix D** and state and local food safety regulations
- b) food safety training (Section C of **Appendix D**)
- c) RDO eligibility (Section E of this **Appendix E**)
- d) use of Product and Section 170(e)(3) compliance (Section B of this **Appendix E**)
- e) IRS receipting requirements (Section F of **Appendix D**)
- f) service delivery to people facing hunger including adherence to USDA nondiscrimination requirements
- g) other local and state regulations, as evidenced by inspection reports and licenses issued by those authorities
- h) additional requirements related to specific Distribution Partner activities

1.4 Agency, Partner Food Bank Program, and RDO Monitoring Follow-up:

Based on the results of an Agency Partner, Partner Food Bank Program, or RDO monitoring visit, Partner Food Banks will take the following actions as applicable:

- a) Partner Food Banks will address minor violations through development of a remedial action plan for the Agency Partner, Partner Food Bank Program, or RDO with reasonable time limits and adequate reporting mechanisms to ensure fulfillment of the action plan and remedy of any violations. Partner Food Banks will carry out follow-up visits as prudent.
- b) If there are violations that create or may create imminent health hazards, Partner Food Banks will place the Agency Partner, Partner Food Bank Program, or RDO on Product hold or partial Product hold status, as appropriate, during which time such Agency Partner, Partner Food Bank Program, or RDO will not be eligible to receive Product from the Partner Food Bank. Partner Food Banks may reinstate the Agency Partner, Partner Food Bank Program, or RDO only after the Partner Food Bank confirms correction of the deficiency and conditions that led to such Product hold or partial Product hold.
- c) If a Partner Food Bank determines that an Agency Partner, Partner Food Bank Program, or RDO is out of adherence and the issue is affecting or could adversely affect Product integrity, donor relations, recipient access to services, or the reputation of the Partner Food Bank or the Network, such Partner Food Bank must establish and follow up on corrective action items, and revisit the Agency Partner, Partner Food Bank Program, or RDO at a minimum every 6 months until the issue is corrected.

- d) Partner Food Banks will prepare and retain written reports stating the findings of monitoring visits, retain written responses from Agency Partners, Partner Food Bank Programs, and RDOs, and prepare and retain documentation of corrective actions taken under this Section J.1.4.

Nothing in or contemplated by this Section J limits the ability of Partner Food Banks to take other actions under contracts or otherwise in respect of non-adherence by an Agency Partner, Partner Food Bank Program, or RDO.

2. Other Requirements

2.1 Food Safety Training for Individuals Conducting Monitoring Visits

Staff or volunteers who conduct monitoring of Distribution Partners must have the required level of food safety knowledge as set out in Section C of **Appendix D** that is relevant to such Distribution Partner’s operations.

2.2 Minimum Monitoring Requirements

Except as provided in Section G.1.5, the monitoring program for Distribution Partners must include, at minimum, an initial physical site evaluation to determine the Distribution Partner’s ability to comply with regulatory requirements and then ongoing regular physical site reviews. Partner Food Banks should carry out additional reviews as prudent.

2.3 Virtual Monitoring

Virtual monitoring is an option for many elements of the monitoring process; however, on-site visits are still required for each type of Distribution Partner. Partner Food Banks may use virtual monitoring in the event of disaster response when monitoring on-site would be unsafe for staff or volunteers. Partner Food Banks should conduct on-site visits when feasible.

2.4 Affiliate Food Bank Monitoring

Partner Food Banks will monitor their Affiliate Food Banks as provided in their Affiliate Food Bank Agreements.

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K. Allowable Fees

1. Allowable Fees for Donated Products

1.1 Handling Fees for Donated Products

Tax regulations (26 CFR 1.170A-4A(b)(3)) allow Partner Food Banks to assess handling fees in respect of Donated Product if the fee: (a) is small or nominal in relation to the value of the transferred property and is not determined by this value; and (b) is designed to reimburse the donee-organization for its administrative, warehousing, or other similar costs. As set out in this Section K, the Network has established several types of fees that Partner Food Banks may assess on the distribution of Donated Product to Agency Partners, other Partner Food Banks, Affiliate Food Banks, or RDOs. Partner Food Banks may not exceed stated caps on allowable fees.

1.2 Shared Maintenance and Referral Fees

Partner Food Banks may assess shared maintenance and referral fees to different Distribution Partners as follows:

- a) Partner Food Banks may charge a shared maintenance fee to Agency Partners, not to exceed the limit in effect at the time as set by FANO and approved by the National Council.

- b) Partner Food Banks may charge a shared maintenance fee to other Partner Food Banks, Affiliate Food Banks, or RDOs, not to exceed the limit in effect at the time as set by FANO and approved by the National Council.
- c) Partner Food Banks may charge a referral fee to other Partner Food Banks, Affiliate Food Banks, or RDOs for Product donations when they refer the receiving Partner Food Bank, Affiliate Food Bank, or RDO to a donor, and when the referring Partner Food Bank does not handle the Product. Such a referral fee may not exceed the cost of soliciting the donation, and may not exceed the limit in effect at the time as set by FANO and approved by the National Council.

1.3 Delivery Fee

Partner Food Banks may charge a delivery fee to Agency Partners, other Partner Food Banks, Affiliate Food Banks, or RDOs, at a rate not to exceed the limit in effect at the time as set by FANO and approved by the National Council, if:

- a) The receiving entity chooses the delivery option and agrees to the fee amount.
- b) The fee is listed as such and billed separately.

1.4 Value Added Processing and Pick and Pack Out Fees

The following sets out requirements for allowable value added processing (“VAP”) and pick and pack out (“PPO”) fees:

- a) The receiving entity must agree to the amount of the fee.
- b) The fee must be listed as such and billed separately.
- c) VAP and PPO fees may not exceed the actual VAP/PPO costs. Direct costs may be included in the computation of the VAP/PPO fee. These costs must be itemized and available to FANO for review and to other Partner Food Banks.
- d) Allowable VAP/PPO costs include: freight from donor or source to packer; freight between co-packers; packaging (e.g., cans, bottles, bags, and jars); labels; boxes; pallets; fill charges from contract packers; ingredients and additives (fragrances, colors, stabilizers, etc.); tape and film; lab testing costs; and repack, picking, or packing personnel.
- e) Examples of Product with allowable VAP and PPO fees include bulk Product that has been processed or repackaged; salvage that has been sorted and is ready for distribution; Product that has been labeled or relabeled; and the picking, packing, washing, mixing or bagging of Product that would otherwise have not been made available to the hunger relief organization.

Partner Food Banks may charge VAP and PPO fees in accordance with this Section K.1.4 not to exceed the limit in effect at the time as set by FANO and approved by the National Council. Section 9 of **Appendix C** sets out information about the tax treatment of Donated Product with allowable VAP and PPO costs.

1.5 Other Agency Fees

Partner Food Banks may charge Agency Partners a one-time application fee for new Agency Partners and an annual membership, partnership, or comparable fee.

2. Disallowed Fees

2.1 Disallowed Fees to Partner Food Bank Programs

Partner Food Banks may not charge shared maintenance fees, referral fees, delivery fees, or annual partnership fees to Partner Food Bank Programs.

2.2 Disallowed Fees for Agency-Enabled Donor Pick-up

Partner Food Banks may not charge a referral fee for donations for which it refers the receiving Agency Partner to the donor, but for which the referring Partner Food Bank does not actually handle the Product. Partner Food Banks may not charge a referral fee to Agency Partners participating in an Agency-enabled Donor Pick-up program.

2.3 Disallowed VAP and PPO Costs

Partner Food Banks may not charge as VAP or PPO fees any indirect costs, freight on finished goods to the receiving Partner, storage space on finished goods, and outgoing handling. Such costs are already covered by the handling fee.

3. Handling Fees - Government Commodities

Partner Food Banks should refer to the requirements for USDA programs in their state to determine which handling fees are allowable in respect of government commodities.

4. Handling Fees - Purchased Products

Partner Food Banks may assess handling fees as they determine for Purchased Products.

5. Periodic Fee Review

FANO and the National Council every year will review fee amounts and make such adjustments as they determine appropriate. FANO will notify Partner Food Banks of any such changes and the effective date of such changes.

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For convenience, the following table sets out fee maximums in effect as of the date of this Agreement as set by FANO and approved by the National Council:

MAXIMUM FEE AMOUNTS IN EFFECT AS OF DATE OF THIS AGREEMENT

Origin	Destination	Product Included	Maximum Shared Maintenance Fee	Maximum Delivery Fee	Maximum VAP or PPO Fee
Partner Food Bank, Affiliate Food Bank, or RDO	Agency Partners, Affiliate Food Banks, RDOs	All Donated Product, handled by the Partner Food Bank	\$0.19 / pound	\$0.10 / pound	direct costs only
Partner Food Bank, Affiliate Food Bank, or RDO	Affiliate Food Banks or RDOs	All Donated Product, handled by the Partner Food Bank	\$0.09 / pound	\$0.10 / pound	direct costs only
Partner Food Bank, Affiliate Food Bank, or RDO	Partner Food Banks	All Donated Product, handled by the Partner Food Bank	\$0.09 / pound	\$0.10 / pound	direct costs only
Partner Food Bank, Affiliate Food Bank, or RDO	Partner Food Banks, Affiliate Food Banks, or RDOs	Donated Product Referrals (i.e. not handled by the Partner Food Bank)	\$0.02 / pound	not allowed	not allowed
Partner Food Bank, Affiliate Food Bank, or RDO	Partner Food Bank Programs, Affiliate Food Bank Programs, RDO Programs or Agency Partner Sponsored Programs	All Donated Product, handled by the Partner Food Bank	not allowed	not allowed	not allowed
Partner Food Bank, Affiliate Food Bank, or RDO	Agency Partners, Partner Food Bank Programs, Affiliate Food Banks, RDOs	All Purchased Product	Amount at discretion of originating organization	Amount at discretion of originating organization	Amount at discretion of originating organization

Related Network Guidance Documents:

- [Feeding America Guide to Allowable Fees](#) (also above)
- [Federal Register / Vol. 47, No. 21 / Monday, February 1, 1982 / Rules and Regulations / Page 4511](#)

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L. Section 170(e)(3)

1. Overview

Many of the requirements set out in this Agreement reflect requirements under Section 170(e)(3). This Section L sets out general information relating to Section 170(e)(3).

2. Section 170(e)(3) Requirements

2.1 Donated Product

Section 170(e)(3):

- a) Defines Product donor eligibility to receive an accelerated tax deduction if the Product donation is used according to Section 170(e)(3) regulations.
- b) Defines the organizations eligible to receive Product donations, including Public Charities and Churches.
- c) Defines the allowable uses of Product donations for the care of the ill, needy, or infants. Details include:
 - i) The predominant focus is on needy individuals. The intent of the legislation is to foster charitable donations to serve the needy.
 - ii) Infants are defined as a minor child, as determined under the laws of the jurisdiction where the child resides.
 - iii) Allowable uses must be in a manner consistent with that organization's exempt purposes and in programs caring for and serving the ill, needy, or infant individuals.
- d) Does not allow Product donations to be transferred by the donee in exchange for money, other property, or services.

2.2 Definition of Needy and Examples

The IRS defines a needy person as a person who lacks the necessities of life, involving physical, mental, or emotional well-being, as a result of poverty or temporary distress. Examples of needy persons set out in 26 CFR 1.170A-4A(b)(2)(ii)(D) include the following:

- a person who is financially impoverished as a result of low income and lack of financial resources
- a person who temporarily lacks food or shelter (and the means to provide for it)
- a person who is the victim of a natural disaster (such as fire or flood)
- a person who is the victim of a civil disaster (such as a civil disturbance)

- a person who is temporarily not self-sufficient as a result of a sudden and severe personal or family crisis (such as a person who is the victim of a crime of violence or who has been physically abused)
- a person who is a refugee or immigrant and who is experiencing language, cultural, or financial difficulties
- a minor child who is not self-sufficient and who is not cared for by a parent or guardian
- a person who is not self-sufficient as a result of previous institutionalization (such as a former prisoner or a former patient in a mental institution)

2.3 Definition of Care of the Needy

The IRS defines care of the needy as alleviation or satisfaction of an existing need. Since a person may be needy in some respects and not needy in other respects, care of the needy must relate to the particular need that causes the person to be needy.

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Related Network Guidance Documents:

- [Full text of IRS Code 170\(e\)\(3\)](#)
- [IRS Code 170\(e\)\(3\) Interpretative Guide](#)
- [IRS Code 170\(e\)\(3\) Interpretive Guide FAQs](#)
- [Federal Enhanced Tax Deduction for Food Donation - A Legal Guide](#) (Harvard Food Law and Policy Clinic)
- [26 CFR 1-170A-4A\(b\)\(3\) - Shared Maintenance](#)
- [IRS Tax Exempt Organization Search](#)
- [IRS Definition of Church](#)
- [IRS FAQs for Indian Tribal Governments and Exempt Organization Issues](#)

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Appendix F

Financial, Governance, and Other Organizational Matters

1. Financial Recordkeeping and Management

1.1 Financial Recordkeeping Requirements

Partner Food Banks will maintain current, complete, and accurate books and records. Partner Food Banks will prepare, on at least a quarterly basis, financial statements that comply with Generally Accepted Accounting Principles (“GAAP”). The CEO/Executive Director, along with the Board of Directors or an appropriate committee of the Board, will periodically review the financial statements.

1.2 Independent Financial Audit

Partner Food Banks will undertake an annual independent financial audit by a certified public accountant. Attestation services such as reviews and compilations are not sufficient to meet this requirement. If applicable, the financial audit will include an Office of Management and Budget (OMB) Circular A-133 (“Single Audit”). Such Single Audits will be completed by the federal due date. Partner Food Bank will complete financial audits by the extended due date for the Form 990 federal tax return.

1.3 Unmodified Audit Opinion

Partner Food Banks are required to secure an unmodified/unqualified opinion letter from their auditors. For those Partner Food Banks required to obtain a Single Audit, such audit should not identify any material weaknesses. If a Partner Food Bank has a reported material weakness or cannot secure an unmodified/unqualified opinion letter, such Partner Food Bank will prepare a written corrective action plan, submit it to the relevant party if and as required, and provide such plan to FANO.

1.4 Communication of Audit Results

Each Partner Food Bank will provide FANO with a copy of its audited financial statements and related opinion letter within 60 days of the audit’s completion and final review by its Board. A Partner Food Bank will provide FANO with a copy of its most recent management letter accompanying the audit upon FANO’s request, provided that such request is based upon FANO’s reasonable concerns regarding the adequacy of internal controls or the ongoing financial viability of such Partner Food Bank.

1.5 Public Meal Claims

Partner Food Banks who make public claims of meals or pounds provided per dollar based on their own computations must have a documented process to support such claims. Partner Food Banks will annually review such process for accuracy, and the CEO/Executive Director will attest to such process annually through the NAR.

1.6 Finances

Partner Food Banks will ensure that they spend their funds honestly, prudently, and in accordance with statements made in fundraising appeals. Partner Food Banks will adhere to BBB Standards for Charity Accountability relating to finances as in effect at the time. Such standards require organizations to meet the following requirements:

- a) Spend at least 65% of total expenses on program activities.
- b) Spend no more than 35% of related contributions on fundraising.
- c) Avoid accumulating funds that could be used for current program activities; unrestricted net assets available for use should not be more than three times the

size of the past year's expenses or three times the size of the current year's budget, whichever is higher.

- d) Make available to all, upon request, complete financial statements prepared in accordance with GAAP.
- e) Include in the financial statements a breakdown of expenses that shows that a portion of these expenses was allocated to program, fundraising, and administrative activities; if the Partner Food Bank has more than one major program category, the schedule should provide a breakdown for each category.
- f) Accurately report the Partner Food Bank's expenses, including any joint cost allocations, in its financial statements.

1.7 Financial Stability

Partner Food Banks will maintain either: (a) operating reserves equal to at least 25% of annual cash operating expenses, determined as of fiscal year-end or (b) positive working capital in each of the two preceding fiscal years. For purposes of this Section 1.7, (i) operating reserves means liquidity as disclosed under GAAP, minus current liabilities excluding in-kind current liabilities and (ii) working capital means current assets less current liabilities excluding inventory.

1.8 Operating Reserves Plan

If the standards contemplated by Section 1.7 are not met, a Partner Food Bank will develop a written plan and timeline to achieve one of the standards. Such plan and timeline must be approved by its Board and provided to FANO promptly following Board approval. The Partner Food Bank must demonstrate measurable progress against the plan in later Network Standards Reviews by FANO.

2. Insurance

2.1 Insurance Coverage

Partner Food Banks will maintain such insurance coverage as is required under applicable law. At a minimum, Partner Food Banks will maintain Directors and Officers insurance as well as comprehensive general liability insurance with combined liability limits of not less than \$1,000,000 that includes product and volunteer liability coverage. Such coverage may not be less than \$1,000,000 per occurrence.

2.2 Cyber Security Insurance

No later than the beginning of a Partner Food Bank's 2026 fiscal year, Partner Food Banks will acquire and maintain cyber security insurance at a level appropriate to the size of the organization, as determined by revenue.

2.3 Insurance Ratings

All insurance coverage must be underwritten by an insurance carrier rated A (includes ratings of A-, A or A+) by A.M. Best Company.

2.4 Approval Required for Self-Insurance

Partner Food Banks (or their Parent Organizations as defined in Section 4.2) may not elect to be self-insured with respect to the risks covered by the insurance contemplated by this Section 2 without first obtaining FANO's approval. Such approval may not be unreasonably withheld.

2.5 Product Donation Agreements

Partner Food Banks acknowledge that FANO agreements with Product donors may include additional requirements relating to insurance coverage, proof of coverage, and donor access to information about such coverage. FANO will advise Partner Food Banks

of such requirements and, if Partner Food Bank accepts Product from such donor, such acceptance constitutes Partner Food Bank's agreement to comply with such terms.

3. Corporate Governance

3.1 Board Size

Partner Food Bank Boards must have at least five voting directors.

3.2 Board Compensation

Each Partner Food Bank will ensure that: (a) no more than one director or 10% of all directors (whichever is greater) may be compensated, directly or indirectly, by the Partner Food Bank; and (b) the Board includes no more than one individual from a single family (immediate family members) and no more than two individuals from a single agency, business, or corporation. For purposes of this Section 3.2, "compensation" does not include reimbursement for expenses, honoraria, or other amounts paid in recognition of service on the Board, or goods or services provided to a director because the director is a community member served by the Partner Food Bank's programs. Compensation does include, without limitation, wages and salaries, fees or other payments to an independent contractor, or, except as otherwise provided in this Section 3.2, other amounts or benefits considered compensation under the BBB Standards for Charity Accountability.

3.3 Equity, Diversity, and Inclusion

The Board will conduct, no less than every 2 years, a written assessment of the Partner Food Bank's efforts to promote and achieve equity, diversity, and inclusion with respect to composition of the Board and the staff, including alignment with the community served by the Partner Food Bank.

3.4 Board Meetings

Partner Food Bank Boards must have a minimum of three meetings per year, at which a majority of directors must be in attendance. Such meetings may be conducted in person or remotely.

3.5 Board Self-Assessment

The Board will complete a documented Board self-assessment no less than once every 2 years. The Board will establish a process for review of individual director performance.

3.6 Treasurer

For purposes of this Section 3, the term "Treasurer" means the director who is the Board lead on financial oversight (such as the chair of a finance committee) whether or not such director holds the office of Treasurer. Directors who are compensated by the Partner Food Bank may not serve as the Board Chair or Treasurer.

3.7 CEO/Executive Director Transitions and Board Chair

If the Partner Food Bank is without a CEO/Executive Director and a Board member steps into the interim or permanent CEO/Executive Director role, such individual may not concurrently serve as Board Chair.

3.8 Board Chair Orientation

Partner Food Bank Board Chairs must participate in an orientation conducted by FANO through teleconference or webinar within 6 months before or after the start of their term as Board Chair.

3.9 CEO/Executive Director Performance Review

The Board will each year conduct and document a review of CEO/Executive Director performance and will determine CEO/Executive Director compensation.

3.10 CEO/Executive Director Succession Plan

The Board will maintain a documented CEO/Executive Director succession plan.

3.11 Bylaws Review

The Board will review the bylaws, and the policies identified in Sections 3.12 – 3.14, no less than once every 3 years and document such reviews.

3.12 Conflict of Interest Policy and Disclosure Statement

Partner Food Banks will adopt and adhere to a written conflict of interest policy. Partner Food Banks will ensure that each director annually submits and signs a statement disclosing relationships or other matters that could give rise to a conflict. For purposes of this Section 3.12, “conflict of interest policy” has the meaning given it in Form 990.

3.13 Whistleblower Policy

Partner Food Banks will adopt and adhere to a written whistleblower policy. Partner Food Banks will ensure that the Board Chair is informed about whistleblower complaints involving the CEO/Executive Director, that the Vice Chair or Secretary is informed about complaints involving the Board Chair, and that the chair of the committee overseeing financial reporting is informed about complaints involving accounting, internal controls, auditing, fraud, embezzlement, or other financial irregularities.

3.14 Document Retention and Destruction Policy

Partner Food Banks will adopt and adhere to a written document retention and destruction policy.

3.15 Organizational Performance

The Board will maintain a policy requiring Board assessment, no less than once every 2 years, of the Partner Food Bank's performance and effectiveness, and of future actions required to achieve its mission.

3.16 Annual Budget

The Board will approve an annual budget.

3.17 Audited Financial Statements and Form 990

The Board will receive and review on an annual basis the Partner Food Bank's Form 990 tax return, audited financial statements, and, if issued, management letter.

4. Organizational Structure

4.1 Eligibility

To be eligible for Partner Food Bank membership in the Network, the Partner Food Bank must meet the criteria set out in either (a) or (b) below:

- a) For individual Partner Food Bank membership:
 - i) The organization must be a Public Charity or a Church.
 - ii) The primary mission and activities of the organization must be related to serving the ill, needy, or infants.
 - iii) The organization must accept and distribute Product as one of its primary activities.
- b) For Partner Food Bank membership as a parent organization (“Parent Organization”) that includes a food bank as one of its programs:
 - i) The parent organization must be a Public Charity or a Church.
 - ii) The primary mission and activities of the parent organization must be related to serving the ill, the needy, or infants.

- iii) The food bank program must accept and distribute donated Product as a primary activity.

For clarity, eligibility for Network membership of a Church is not limited in terms of denomination, faith tradition, or religious practice.

4.2 Additional Requirements for Parent Organizations

Parent Organizations must meet the following requirements:

- a) The food bank program must have an active oversight committee with at least one member of this committee being a voting member of the Parent Organization's Board.
- b) The oversight committee must conduct a minimum of three meetings per year to provide advice and counsel on food banking operations.
- c) The oversight committee must provide guidance to the Parent Organization on food banking priorities and outcomes for inclusion into the Parent Organization's strategic plan.
- d) The oversight committee must provide reports to the Parent Organization and such reports must be available to the Parent Organization Board.
- e) The food bank program director must be invited to attend all Parent Organization Board meetings.
- f) Both the Parent Organization and food bank program must have separately maintained financial reports. The Parent Organization must maintain separate records and reports for the food bank program showing the food bank program's annual budget, fundraising results, assets, financial performance, and, as provided in Section 4.3(h), support fees charged to the food bank program.
- g) The Parent Organization must meet the financial reporting and audit requirements set out in Sections 1.2 – 1.4 of this **Appendix F**. The audited financial statements must include, in the Statement of Functional Expenses and notes as appropriate, specific information regarding the food bank program.
- h) The Parent Organization may not charge general assessments to the food bank program. All support fees (e.g., finance, human resources, leases, etc.) paid by the food bank program to the Parent Organization must be: (i) directly associated with the support functions provided by the Parent Organization to the food bank program; (ii) substantiated by appropriate records; and (iii) clearly disclosed and enumerated in the separately maintained fiscal reports.
- i) The Parent Organization will ensure that all gifts, grants, sponsorship dollars, and other funds directed to or generated by the food bank program (including, without limitation, unrestricted funds) by donors, grant makers, sponsors, or other funders are used only for food bank program purposes in accordance with donor intent.
- j) The food bank program director must have full-time direct responsibility for the overall operations of the food bank program and report directly to the CEO/Executive Director of the Parent Organization.
- k) The food bank program must address the full range of food banking functions including Product distribution, Product sourcing, fundraising, Distribution Partner management, and marketing/communications, and may do so through either: (a) dedicated staff reporting directly to the food bank program director or (b) staff

members managed by the Parent Organization who dedicate at least 50% of their time to the food bank program as documented and demonstrated by the Parent Organization to FANO.

4.3 Locations

A primary location is the location designated by a Partner Food Bank as its main contact address for Network purposes. A secondary location is any other physical location that the Partner Food Bank is operating through lease, rent, donation, or ownership, regardless of the activities conducted at the location, and regardless of the length of time for which the Partner Food Bank is responsible for the site. For clarity, obligations under this Agreement apply to Partner Food Bank activities at both primary and secondary locations.

5. Staffing

5.1 Adequate Staffing

Partner Food Banks will:

- a) maintain adequate staffing to sustain effective operations, with staff reasonably available during regular business hours
- b) designate one person as the executive leader (CEO, Executive Director, or other title) or maintain a shared executive leadership model (Co-CEOs, Co-Executive Directors, or other title)
- c) maintain availability of part-time or volunteer resources to accommodate special workload requirements

5.2 New CEO/Executive Director Orientation

New CEO/Executive Directors of Partner Food Banks, new CEO/Executive Directors of Parent Organizations, and new directors of food bank programs operated by Parent Organizations, must attend a FANO orientation within 12 months of appointment to such position.

5.3 Network Engagement

Partner Food Bank CEO/Executive Directors, CEO/Executive Directors of Parent Organizations, and directors of food bank programs operated by Parent Organizations must participate in the Network including, at a minimum, attending a FANO executive leadership conference once every 2 years. For clarity, in the case of food bank programs operated by Parent Organizations, both the food bank program director and the CEO/Executive Director of the Parent Organization must meet the requirements set out in this Section 5.3.

5.4 Contact Information

Partner Food Banks will provide FANO with:

- a) current contact information for the CEO/Executive Director or co-CEO/Executive Directors
- b) current contact information for a designated senior leader if the CEO/Executive Director or a co-CEO/Executive Director cannot be reached
- c) in the case of food bank programs operated by a Parent Organization, current contact information for both the food bank program director and the CEO/Executive Director of the Parent Organization
- d) current contact information for a disaster lead and alternate as required by **Appendix H** (disaster services)

6. Communications

6.1 Information

Partner Food Banks will provide to FANO accurate and current information for use in FANO external communications such as a food bank locator or other directory on the feedingamerica.org website, FANO’s annual report, and other communications.

6.2 Notice

A Partner Food Bank will notify FANO promptly of:

- a) any changes in its status as a nonprofit corporation in good standing under its jurisdiction of incorporation or any loss of tax-exempt status or other development such that the Partner Food Bank no longer satisfies the Eligibility Requirements
- b) the departure of its CEO/Executive Director
- c) loss of funding, the filing of any litigation, or any other development that has or could have a material adverse effect on its financial condition or otherwise materially affect its ability to carry out its operations
- d) any food safety, neighbor or community interaction, financial or organizational integrity, workplace environment, or other development that could have a material adverse effect on the reputation of the Partner Food Bank, Network, or FANO, or on Product integrity or donor relations

Partner Food Banks will coordinate with FANO in carrying out crisis communications actions as appropriate.

7. BBB Standards

Section 1.6 sets out the BBB Standards for Charity Accountability relating to Finances as of March 1, 2023. Section 3 draws on such standards relating to governance and oversight, and measuring effectiveness. The content is based on this [website](#).

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Additional Resources:

[Feeding America Situational Analysis: Issue, Reputation and Media Management - A Crisis Communication Playbook](#)

Appendix G

Partner Food Bank Fees

1. Annual Fee

Beginning on July 1, 2023, Partner Food Banks will pay an annual fee to FANO on the basis set out in this **Appendix G**.

2. Fee Computation

2.1 Total Fee

FANO each year will establish a total fee amount ("Total Fee"). The Total Fee for the year beginning July 1, 2023, will be \$3,095,405.

2.2 Assignment to Tier

FANO each year will assign Partner Food Banks into 1 of 8 tiers ("Tiers"), composed of an equal or roughly equal number of Partner Food Banks, based on relative Average Fundraising Amounts. "Average Fundraising Amounts" means the average of the private fundraising amounts reported by a Partner Food Bank in its NAR for the most recent three years. For clarity, such amounts should not include amounts generated through capital campaigns, government funding, or earned revenue.

2.3 Percentage Contribution

FANO will establish for each Tier a percentage contribution to the Total Fee. FANO will assign relatively higher percentage contributions to Tiers comprised of Partner Food Banks with higher Average Fundraising Amounts.

2.4 Calculation of Fee

FANO will determine the annual fee for each Partner Food Bank by calculating the total amount payable by all Partner Food Banks in such Partner Food Bank's Tier, and then dividing that amount by the number of Partner Food Banks in such Tier.

2.5 Adjustments to Total Fee

FANO may adjust the Total Fee on an annual basis in a manner consistent with cost-of-living increases, subject to a maximum increase in any year of 4%. FANO will notify Partner Food Banks of any such changes.

2.6 Adjustments to Tiers and Percentage Contributions

FANO may revise Tier levels to reflect changes in fundraising patterns and outcomes over time. FANO will notify Partner Food Banks of any such changes.

3. Fee Payment

3.1 FANO Notification

FANO will each year notify each Partner Food Bank of its annual fee and the timing of quarterly payment at least 60 days prior to July 1.

3.2 Payment Timeline

Partner Food Banks will pay the fee in quarterly installments.

3.3 FANO Invoices

FANO will issue invoices at the beginning of each fiscal quarter to Partner Food Banks. Partner Food Banks will pay the invoiced amounts no later than 30 days after date of invoice.

4. Reinvestment of Fees in Membership

FANO will use fees for grants or other allocations under the Network Resource Allocation Policy to Partner Food Banks and other members, or otherwise make them available to members for programmatic purposes.

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The following table shows the Tiers, percentage contributions, and fee for Partner Food Banks in each Tier for the year beginning July 1, 2023.

Tier	Range of Average Fundraising Amounts within Tier	Percentage Contribution to Total Fee	Partner Food Bank Fee
1	\$23.8 – \$82.2 million	32.0%	\$39,621
2	\$14.5 – \$23.6 million	22.5%	\$27,859
3	\$9.6 – \$14.3 million	14.0%	\$17,334
4	\$7.1 – \$9.4 million	11.0%	\$13,620
5	\$5.3 – \$7.1 million	6.5%	\$8,048
6	\$3.7 – \$5.2 million	5.5%	\$6,810
7	\$2.4 – \$3.7 million	5.0%	\$6,191
8	\$0.5 – \$2.4 million	3.5%	\$4,334
Total		100.0%	

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Appendix H Disaster Services

1. Planning and Coordination

1.1 Disaster Plans

FANO will maintain and annually review a disaster plan for the Network. Each Partner Food Bank will maintain and annually review a disaster plan for its Service Area. Such Partner Food Bank plans must reflect the following elements:

- a) Disaster plans will address, at minimum, preparedness, planning, Partner Food Bank roles and responsibilities, response, and recovery.
- b) Plans should provide for a Partner Food Bank to maintain typical daily operations if the Partner Food Bank's entire Service Area is not affected by the disaster.
- c) Partner Food Banks in Shared Service Areas must collaborate on preparation of the disaster plan.
- d) Partner Food Banks must include their Affiliate Food Banks and RDOs in the creation and updating of disaster plans.

1.2 Staff Disaster Lead

Each Partner Food Bank will be responsible for, at minimum, designating a staff disaster lead and alternate, to be communicated to FANO on at least an annual basis.

1.3 Disaster Identification and Classification

FANO, in consultation with the affected Partner Food Bank(s), will classify a disaster in accordance with the classification scheme set out below:

Tier	Classification
Tier 1	<ul style="list-style-type: none"> ▪ Limited in scope, affecting a limited number of households in a single Service Area; demand on local food bank would typically be met with resources on hand or available in the community. ▪ Examples: temporary disruptions to local infrastructure (power, water); localized flooding; contained fire that does not require long-term evacuations; small tornado/straight-line winds affecting a limited number of homes or communities.
Tier 2	<ul style="list-style-type: none"> ▪ Somewhat limited in scope, but affecting a significant number of households; one to three Partner Food Banks would be affected, but the Partner Food Bank(s) would probably be able to meet most of the increased demand with resources on hand or resources provided by local sources. ▪ Examples: tornados; flooding; civil disturbance; widespread fire; more prolonged disruption to local infrastructure (power or water out for 2 weeks); flooding; fire requiring evacuation/sheltering (up to 2 weeks); mid-sized tornado affecting underinsured or less-resourced communities.

Tier 3	<ul style="list-style-type: none"> ▪ Affecting a large number of households, usually in more than one Service Area; likely requires that outside Product resources would be needed to supplement existing inventories and local donations in order to meet increased demand. ▪ Examples: small to medium hurricanes; larger flooding; tornados; or fires affecting population centers.
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Tier 4	<ul style="list-style-type: none"> ▪ Widespread and longer-term disruption to community services and critical infrastructure (power, water, communication, transportation) that requires Partner Food Bank(s) to divert resources (staff time, inventory, funds) and supplemental resources from outside the Service Area in order to meet the incremental need for food and grocery items in affected communities. ▪ Extreme cases could result in the long-term incapacitation of the local Partner Food Bank(s) or temporary loss of key Partner Food Bank functions and overall operations and capabilities. ▪ Examples: Large hurricanes; multi-state/regional flooding impacting large populations; earthquakes; global pandemic.
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If a particular situation does not clearly fit into such classification scheme, FANO may, either on its own or in response to a request from an affected Partner Food Bank, coordinate with National Voluntary Organizations Active in Disaster (“VOAD”) and other national partners on behalf of the affected Partner Food Bank(s).

1.4 Coordination Among Partner Food Banks and Service Areas

FANO will help coordinate disaster relief efforts if a disaster affects: (a) multiple different Partner Food Bank Service Areas or (b) a Service Area where there are multiple Partner Food Banks. FANO will maintain staff trained in the National Incident Management System (“NIMS”) or equivalent national disaster protocols.

1.5 Affiliate Food Banks and RDOs

Partner Food Banks must include their Affiliate Food Banks and RDOs in disaster response and relief work.

1.6 Community Coordination

Partner Food Banks will establish collaborative commitments and agreements with appropriate governmental agencies, disaster relief organizations, community organizations, other Partner Food Banks, and Distribution Partners as needed and available to facilitate effective and coordinated relief activities. Such collaboration includes, without limitation: (a) identifying (i) alternative warehouse/office sites; (ii) alternative distribution, transportation, power, and communication resources; and (iii) if feasible, housing and feeding systems for staff and volunteers; and (b) developing and actively participating in mutual aid or assistance agreements and/or local or state collaboratives.

1.7 FANO Disaster Support

For most disasters, Partner Food Banks will undertake primary responsibility for disaster relief without assistance from FANO. If a Partner Food Bank is unable to meet identified relief needs, or at FANO’s discretion, FANO will undertake support activities based on the situation assessment and disaster classification at the time. The following table sets out indicative responses by tier. None of the potential FANO activities below precludes the Partner Food Bank(s) from conducting its own fundraising efforts in response to the disaster.

Tier	Response
Tier 1	<ul style="list-style-type: none"> ▪ FANO will coordinate FANO outreach to affected Partner Food Bank(s), including conducting ongoing disaster monitoring and providing technical assistance if requested.
Tier 2	<ul style="list-style-type: none"> ▪ FANO will coordinate FANO outreach to affected Partner Food Bank(s), including conducting ongoing disaster monitoring and providing technical assistance if requested. ▪ FANO will seek to raise awareness by amplifying Partner Food Bank social media posts. ▪ FANO will notify donors of FANO's response, share special food or fund requests with donors as appropriate, and work with the appropriate departments to ensure donor recognition is provided.
Tier 3	<ul style="list-style-type: none"> ▪ FANO will coordinate FANO outreach to affected Partner Food Bank(s), including conducting ongoing disaster monitoring and providing technical assistance if requested. ▪ FANO will seek to raise awareness by distributing external talking points, sharing internal updates, answering media inquiries, promoting disaster response on feedingamerica.org, and publishing national social media posts (including amplifying Partner Food Bank posts). ▪ FANO will determine and communicate its fundraising response with affected Partner Food Bank(s). ▪ FANO will notify donors of FANO's response, share soft Product asks with donors as appropriate, track the disaster donor pipeline, and work with the appropriate departments to ensure donor recognition is provided.
Tier 4	<ul style="list-style-type: none"> ▪ FANO will coordinate FANO outreach to affected Partner Food Bank(s), including conducting ongoing disaster monitoring and providing technical assistance if requested. ▪ FANO will seek to raise awareness by distributing external talking points, sharing internal updates, reaching out to media and answering media inquiries, promoting disaster response on feedingamerica.org, publishing national social media posts (including amplifying Partner Food Bank posts), and providing messaging for disaster fundraising campaigns if appropriate. ▪ FANO will determine and communicate its fundraising response with affected Partner Food Bank(s). ▪ FANO will notify donors of FANO's response, share Product asks with donors as appropriate, track the disaster donor pipeline, liaise with the grant team, and work with the appropriate departments to ensure donor recognition is provided. ▪ FANO will manage the National Disaster Relief Fund (as defined in Section 3.1 of this Appendix H). ▪ FANO will support state level advocacy efforts aimed at securing supplemental disaster funding or government commodities in support of affected Partner Food Banks.

1.8 FANO Large Disaster Support

FANO may provide the following additional support for larger scale disasters:

- a) Serve as overall coordinator of the Network's support of relief efforts.
- b) Serve as primary liaison with other national disaster relief and response agencies.
- c) Assist with assessment of disaster severity and identification, and with coordination of supplemental resources for the affected Partner Food Bank(s).
- d) Identify and offer FANO staff who are available to send to the affected Service Area(s) as loaned resources.
- e) Identify loaned staff from other Partner Food Banks available to assist affected Partner Food Bank(s) in addition to those loaned staff available under mutual aid agreements.
- f) Coordinate Product donations from National Product Donors and other Partner Food Banks.
- g) Coordinate national public relations and communications activities.
- h) Coordinate Product allocation logistics and documentation.
- i) Provide services for national fundraising activities.
- j) Coordinate communications with and among affected Partner Food Bank(s).

2. Support and Donations

2.1 Soliciting Public Support

FANO and other Partner Food Banks, upon request by an affected Partner Food Bank, may provide the affected Partner Food Bank with fundraising advice and assistance. Partner Food Banks may raise funds within their Service Areas for donation to affected Partner Food Bank(s).

2.2 Staffing Assistance

Partner Food Banks are encouraged to make reasonable offers of staffing assistance for relief efforts. FANO will maintain a database of Partner Food Bank staff (including, without limitation, staff with operations, development, communications, and government relations expertise) who are available to send to the affected Service Area(s). FANO, if notified by the relevant Partner Food Banks of the loaned staff placement, may cover the costs of transportation, food, and lodging for such loaned staff that exceed the recipient Partner Food Bank's ability to cover loaned staff travel costs. FANO may cover such costs out of the National Disaster Relief Fund described in Section 3.1 of this **Appendix H**.

2.3 Product Donation Outside of Mutual Aid Agreements

Partner Food Banks will coordinate with FANO when offering Product for use in disaster relief efforts outside their Service Area(s) when such donation is outside of a regional mutual aid agreement. If FANO decides to accept such Product, FANO will manage logistics and cover transportation costs. FANO will not reimburse logistics and transportation costs for Partner Food Banks that offer such Product directly to the affected Partner Food Bank(s) outside of a regional mutual aid agreement and without coordinating with FANO. For clarity, neither FANO nor the affected Partner Food Bank(s) will reimburse a Partner Food Bank for any loss of handling fee revenue.

2.4 Use of Product Donations During Disaster Response

Donated Products distributed during disaster response are subject to the same distribution standards set out elsewhere in this Agreement including, without limitation, compliance with Section 170(e)(3). As such, Donated Product must be distributed to the ill, needy, or infants. Guidelines for determining need include, without limitation:

- a) geographic or physical proximity to the disaster
- b) direct impact of the disaster (e.g., tier level)
- c) government declarations of a state of emergency, disaster area, or comparable declaration
- d) self-declaration of need, assessment of self-evident need, or other intake process appropriate to the specific disaster
- e) first responder status (first responders can be considered “in need” of assistance while engaged in active disaster response)

2.5 Use of Product Donations After Disaster Response

Partner Food Banks will make diligent efforts to distribute Product donated for disaster relief aligned with donor intent and consistent with the nature of the emergency need.

2.6 Temporary Disaster Feeding Partners

Appendix E sets out requirements for establishing Temporary Disaster Feeding Partners.

3. Funding and Fees

3.1 National Disaster Relief Fund Disbursement

FANO will establish and maintain a disaster relief fund (“National Disaster Relief Fund”). FANO may use the National Disaster Relief Fund for the following expenses:

- a) direct disaster costs for FANO, such as staff and travel
- b) Product transportation
- c) operating costs for additional warehousing capacity for disaster relief Product, such as rent, utilities, equipment, and personnel
- d) purchase or rental of equipment and supplies
- e) acquisition of Product
- f) reimbursement of Partner Food Banks for operating expenses related to disaster relief efforts as provided in Section 3.2 of this **Appendix H**

3.2 Reimbursement of Expenses

In unusual circumstances where local fundraising efforts have not been sufficient to cover local expenses, affected Partner Food Banks may ask FANO to reimburse such Partner Food Banks for disaster-related operating expenses. FANO, at its discretion, will reimburse Partner Food Banks for relief efforts (typically those occurring within 12 weeks after a disaster), but will not do so for recovery efforts. Reimbursable operating expenses include, without limitation: (a) overtime pay; (b) temporary help; (c) cost of transportation, food, and lodging for loaned staff where FANO has prior notification of such loaned staff placement(s); (d) transportation; (e) additional warehouse space (e.g., rent, utilities, equipment, and operating needs); (f) other costs due to extraordinary circumstances; and (g) lost handling fees for Product pulled from existing inventory. Partner Food Banks should create a separate finance code to track all disaster relief expenses to facilitate reporting accurate totals of disaster-related operating expenses. For clarity, FANO in appropriate cases may reimburse travel costs directly to Partner Food Banks who, with prior notification to FANO, have loaned staff to affected Partner Food Banks.

3.3 Application for Reimbursement

Partner Food Banks seeking reimbursement must submit to FANO an application that states the circumstances leading to the request, identifies costs organized by category, and includes such other information as FANO may reasonably request. FANO will review applications and make and communicate its decision in a timely manner after it receives the application. FANO may decide to

reimburse all, some, or none of such expenses, and will make reimbursement payments, if any, no later than 30 days after its approval of the application.

3.4 Handling Fees

Partner Food Banks may not charge handling fees to Agency Partners for disaster relief Product. For clarity, Partner Food Banks may charge handling fees when:

- a) Partner Food Banks distribute disaster relief Product from their existing inventory following completion of the disaster response
- b) Partner Food Banks distribute such disaster relief Product to Agency Partners under a local reimbursement agreement such as when the Agency Partner has received government subsidies for the purposes of buying Product for disaster response use

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Appendix I

Information Sharing, Protection, and Disclosure

1. Introduction

The following goals and core understandings underlie the terms and arrangements set out in this **Appendix I**:

- a) A modern, Network-wide data collection, data analysis, and data sharing capacity relating to operational performance and program impact is essential to meeting the expectations of donors and other key partners as well as serving people facing hunger.
- b) Such a capacity is essential to effective planning, collaboration, operations, and resource sharing across the Network in alignment with the Network Charter.
- c) Such a capacity will facilitate the Network's broader anti-hunger and anti-poverty research and initiatives.
- d) Ensuring a climate of reciprocity across FANO and the Network is central to the Network's shared data initiatives. The labor in collecting, sharing, and analyzing data must be recognized and it is essential that the value proposition of such labor be transparent to the Network.
- e) Requirements for data collection and technology should consider resource differences among Partner Food Banks.
- f) Respecting the dignity and privacy of people facing hunger are cornerstones of any data collection and related activities. These activities serve to enable Partner Food Banks and Agencies to better serve people facing hunger, be more effective collaborative partners, and make better-informed leadership and operating decisions.
- g) Ensuring appropriate confidentiality and use of Partner Food Bank performance data and other information is central to Network data information sharing activities.

2. Required Reporting by Partner Food Banks

2.1 Required Reports

Partner Food Banks will complete and submit to FANO, in a timely manner, periodic and other reports as approved by the National Council. Such reports as of the date of this Agreement include:

- Quarterly Pulse Report ("QPR")
- Network Activity Report ("NAR")
- Grant reports as may be required by FANO
- Product recall reports as may be required under Section D of **Appendix D**
- Reports on Product donations from a National Product Donor (blue receipt reports)

2.2 Changes in Required Reporting

Any material changes in the form or required content of the NAR or QPR require approval of the National Council. The adoption of new reporting requirements beyond those contemplated by this **Appendix I** require amendment of this Agreement.

3. Automated Reporting and other Data Initiatives

3.1 Transition to Automated Reporting of Operational Data

FANO and Partner Food Banks will implement automated reporting, by Partner Food Banks to FANO, of certain data regarding operational performance, in accordance with the plans and timeline contemplated in Sections 3.2 and 3.3. Such data may include, without limitation:

- a) pounds received and distributed, including detail such as channel, category, county, trash/waste, food donor information (National Product Donors only), and inventory
- b) financial information including total revenue and total operating expenses
- c) staff, fleet, facilities, and equipment items

For clarity, the transition to automated reporting of operational data does not include the reporting of data on service to people facing hunger such as numbers served, demographics, number of visits, and number served by county. As of the date of this Agreement, Partner Food Banks may opt in to digitally collect and report such data regarding services provided at Partner Food Banks and through Distribution Partners.

3.2 Transition Plan

FANO, in consultation with the National Council, will develop a plan for the transition by Partner Food Banks and FANO to automated reporting. Such transition plan will be designed with a goal of meeting each Partner Food Bank where it is in technology use. In carrying out such work, the National Council may, as it determines, create a standing committee, task force, or advisory committee to guide the planning. The plan may address topics such as:

- a) preparation of readiness assessments and implementation plans
- b) development and delivery of training programs
- c) key milestones and metrics
- d) resource needs including FANO investment
- e) prioritization and sequencing of technology support

3.3 Transition Timeline

FANO and Partner Food Banks will take a phased approach to the transition to automated reporting of operational data, with a target date of December 31, 2025 for 50% of Partner Food Banks engaging in such reporting, and a target date of December 31, 2027 for 100% of Partner Food Banks engaging in such reporting.

3.4 FANO Support for Transition

FANO will develop a plan for supporting Partner Food Banks in transitioning to automated data sharing and related use of data analytics resources, with a goal of ensuring equity across the Network with respect to technology initiatives and taking into account available FANO resources and other information technology initiatives. Such support may include, without limitation: provision of assessment and planning templates; participation in and support of technology assessment and planning activities; consultation regarding staffing needs; provision of initial and ongoing training; and awards of grants or other financial assistance in line with the network resource allocation principles contemplated by **Appendix L**.

3.5 Other Data Initiatives

FANO, with the National Council's consent, may survey Partner Food Banks regarding data goals and needs, and may launch and carry out other data initiatives involving Partner Food Bank data collection and reporting. Such initiatives may involve a scope beyond operational data. A Partner Food Bank's participation in any such initiatives will be voluntary. Participation

may enable access to technology and technical support, data visualization services, data analytics, and other reports and tools not generally available to Partner Food Banks.

3.6 Sub-Agreements

A Partner Food Bank's participation in a data initiative, whether or not data sharing is carried out on a manual or an automated basis, may require entry by the Partner Food Bank into a sub-agreement with FANO. Such agreements may address topics such as data collection purposes and goals, data types and reporting formats, data use and disclosure, access control, data security including encryption, and data ownership.

4. Protection of Individual and Other Data

4.1 Purpose

FANO and Partner Food Banks acknowledge the central importance of respecting individual privacy and dignity, and of ensuring data security generally. To that end, FANO and Partner Food Banks will take administrative measures and establish technical safeguards as set out in this Section 4.

4.2 Administrative and Technical Safeguards

FANO and Partner Food Bank will take such actions as are appropriate to protect individual privacy and ensure data confidentiality and security across all activities including, without limitation, data collection on service delivery to people facing hunger, fundraising, human resources, and operational data reporting. Such measures may include, without limitation:

- a) obtaining appropriate consents from individuals
- b) establishing physical safeguards, such as device locks and password-protected devices on internet networks, and storing sensitive printed materials in secured cabinets
- c) limiting access to information only to employees and contractors or other third parties who need such access to perform their responsibilities
- d) assigning user accounts only with access permissions essential to an individual employee's or contractor's responsibilities
- e) establishing electronic safeguards that provide a reasonable level and scope of security and are otherwise consistent with FANO data sharing policies and controls
- f) requiring consultants, service providers, and others with access to information to enter into non-disclosure agreements

4.3 Respecting Dignity and Privacy of People Facing Hunger

In line with respecting the dignity and privacy of people facing hunger, and except as may otherwise be agreed upon with a particular individual, FANO and Partner Food Banks will:

- a) not publicly release the names of individuals or information that could be linked to an individual
- b) not create data analyses or present the results of such analyses (including maps) in any manner that would reveal an individual's identity
- c) not release or publish data, including individual addresses, that could identify or cause damage to an individual
- d) not use information to attempt to identify any persons or contact such persons for purposes not related to serving them

Such requirements are applicable with respect to all data and other information-collection activities of FANO and Partner Food Banks.

4.4 Compliance with Law

FANO and Partner Food Banks will comply with applicable laws in carrying out data collection, protection, use, and disclosure activities.

4.5 Affiliate Food Banks, RDOs, Agency Partners, and Host Sites

Partner Food Banks will require their Affiliate Food Banks, RDOs, Agency Partners, and Host Sites to take appropriate administrative and technical measures designed to protect individual privacy and data confidentiality and security.

4.6 Data Security Breaches

FANO and a Partner Food Bank will notify the other promptly following discovery or notification of any actual security breach that involves data relating to such Partner Food Bank. The party that suffers such breach (“Affected Party”) will take prompt action, at its expense, to investigate the breach, identify and mitigate the effects of the breach, and implement reasonable remedial measures in response to the breach. The Affected Party will also provide the other party with reasonably available information relating to the breach and cooperate with the other party in addressing impacts of the breach. A Partner Food Bank will provide similar notice to other Partner Food Banks promptly following discovery or notification of any actual security breach that involves data relating to such other Partner Food Banks.

5. Use and Disclosure of Operational Performance Data

The National Council will develop and maintain a policy relating to use and disclosure of NAR, QPR, and other operational performance data reported by Partner Food Banks to FANO. Such policy may address topics such as:

- use by FANO of Partner Food Bank data
- use by Partner Food Banks of data reported by other Partner Food Banks
- disclosure by FANO and Partner Food Banks of data to other members and Agency Partners
- disclosure by FANO and Partner Food Banks of data to donors, government agencies, legislators or other elected or appointed officials, strategic partners, corporate partners, media representatives, and the public
- disclosure of data sets and Partner Food Bank data to academic, nonprofit, and other researchers
- disclosure of Partner Food Bank data to attorneys, auditors, and otherwise as may be required by law
- non-disclosure of information that could identify individuals facing hunger, donors, or staff members
- entry into non-disclosure agreements with data recipients
- anonymity of individual Partner Food Banks and aggregation of individual Partner Food Bank data in data sets provided to researchers
- time limits on non-disclosure requirements

FANO and Partner Food Banks will adhere to the requirements set out in such policy.

6. Confidential Information

6.1 Confidential Information

In working together, FANO and Partner Food Banks may share confidential and sensitive information such as information about donors, fundraising opportunities, Network Standards Review findings and action items, Board and personnel issues, concerns regarding other members, and potential reputational, regulatory, or legal exposures. Partner Food Banks may similarly share confidential and sensitive information with one another. Such information is referred to collectively as “Confidential Information.”

6.2 Use and Disclosure

Except as otherwise provided in this Agreement or as may be required by law or expressly authorized by the disclosing party, FANO and Partner Food Banks will: (a) use another party's Confidential Information only in connection with its Network activities; (b) keep such information confidential, using at least the same degree of care it uses to protect its own Confidential Information; and (c) disclose such information only to its officers, directors, employees, attorneys, and consultants who need access to the information in connection with their responsibilities to the recipient party (each an "Authorized Person"). Authorized Persons will be subject to, and the receiving party will be responsible for ensuring that they comply with, the terms of this Agreement.

6.3 Exceptions

The use and disclosure requirements set out in this Section 6 do not apply if the information: (a) is or becomes generally available to the public other than as a result of a disclosure by the receiving party; (b) was known by the receiving party prior to its first being furnished by the disclosing party; (c) is or becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party; or (d) is independently developed by the receiving party.

7. Other Matters Relating to Information Sharing and Disclosure

7.1 Other Information

FANO and Partner Food Banks acknowledge that disclosure about Partner Food Bank activities is essential to Product sourcing, fundraising, movement-building, and other core Network functions and initiatives, that shared learning is central to Network success, that transparency is a Guiding Principle of the Network Charter, and that not all information they share or learn about one another should be treated as confidential. For example, FANO or a Partner Food Bank in the ordinary course may gather anecdotal information about program implementation that would be helpful to share with government agencies, donors, or other Partner Food Banks. FANO and Partner Food Banks will use good judgment and common sense in disclosing such information (including consulting with the relevant party and disclosing on an anonymous basis if feasible and appropriate) and otherwise in a manner consistent with the Charter.

7.2 Accuracy

FANO and Partner Food Banks acknowledge the importance of accuracy and completeness in the data, reports, and other information they provide to one another and to donors, government agencies, legislators or appointed officials, corporate and other partners, media representatives, and the public. FANO and Partner Food Banks will use good faith and diligent efforts to ensure that all such information, including, without limitation, operational performance data, is free of material error or omission, with due regard to the nature of the information and the context of the communication.

7.3 No Conflict

FANO and Partner Food Banks represent and confirm to one another that (a) they have obtained, or will obtain, all necessary rights and permissions to transmit data and other information to one another; and (b) no such communication will violate or infringe any contract to which such organization is a party.

7.4 Disclosures by FANO to National Council; Transition and Accountability Actions

Notwithstanding any other provision of this Agreement including this **Appendix I**, or of a policy contemplated by this **Appendix I**:

- a) FANO will notify the National Council of cases where a Partner Food Bank has failed to act in a manner materially consistent with the Network Charter or has demonstrated a pattern of material non-adherence to the Network Standards, and

may disclose data or Confidential Information of such Partner Food Bank in connection with such notification and related discussions or other actions.

- b) FANO may disclose data and Confidential Information to the extent necessary in connection with transition activities following termination of a Partner Food Bank under Section 20 of the Agreement, and to the NAC and as otherwise necessary in connection with accountability actions as set out in Section 17 – 20 of the Agreement.

FANO in making such notifications and disclosures will seek to disclose information only to the extent necessary given the circumstances and with due regard to privilege considerations.

7.5 Disclosures in Relationship Management Process

Notwithstanding any other provision of this Agreement including this **Appendix I**, or of a policy contemplated by this **Appendix I**, a party participating in the relationship management process contemplated by this Agreement may disclose data or Confidential Information of another party to the RIC in connection with a dispute with such other party.

7.6 Certain Communications involving Legal Matters

FANO and Partner Food Banks understand that some communications between FANO and a Partner Food Bank may involve matters where one or both parties are consulting with attorneys, and that related materials and information (collectively and for purposes of this Section 8.5, “Protected Information”) may be subject to attorney-client privilege, work-product doctrine, or similar privileges or doctrines (collectively, “Privileges”). FANO and Partner Food Banks acknowledge that they have a commonality of interest with respect to Network matters, and that it is their mutual intention that neither joint consultations nor sharing Protected Information is intended to or will affect the confidentiality of, or waive or diminish the continued protection under any Privilege of, any Protected Information. As such, all Protected Information will remain so protected and will be entitled to protection under the common interest doctrine. FANO and Partner Food Banks will take appropriate measures to preserve the applicability of all Privileges.

7.7 Required Disclosure

If a party is requested or required to disclose any non-public data or Confidential Information of another party due to statutory or other legal requirements or legal proceedings (including, without limitation, inquiries or other interactions with federal, state, county, and other administrative or regulatory agencies), such party will promptly provide the other with written notice of the request or requirement so that the disclosing party may seek a protective order or other remedy. If, in the absence of a protective order or other remedy, a party is nonetheless legally compelled to disclose such information, the party may disclose only that portion of the information which counsel advises is legally required to be disclosed.

7.8 Platform and Third Party Provided Terms

FANO and Partner Food Banks acknowledge that Network digital platforms such as HungerNet and the Platform may maintain additional terms and conditions relating to information sharing and other use of the platform. If there is any conflict between such terms and this Agreement, this Agreement will control.

7.9 Third Party Relationships

Nothing in this Agreement limits Partner Food Banks’ or FANO’s ability to enter into data sharing agreements with third parties, provided that such agreements are not inconsistent with the terms of this Agreement or any data sharing policy adopted by the National Council.

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Related Network guidance documents:

- [NAR and QPR Late Submittal Policy](#)

Appendix J Fundraising

1. Partner Food Bank Fundraising

1.1 Community Support

Partner Food Banks will actively solicit funds throughout their Service Areas and demonstrate broad community support from funding sources, corporations, in-kind contributors, individuals, foundations, and other organizations.

1.2 Past Donors

Partner Food Banks may steward, cultivate, and solicit past donors based on available contact data, regardless of where such past donors reside, with the goal of renewing their support. Partner Food Banks may communicate with past donors across all channels, including direct mail and digital channels.

1.3 Respect for Service Areas and Donor Intent

Partner Food Banks will limit new donor acquisition efforts to constituents residing or working in their Service Area or constituents who have expressed donor intent in engaging with the Partner Food Bank. Partner Food Banks will carry out such activities in accordance with these requirements:

- a) A Partner Food Bank will target prospects who work but do not reside in such Partner Food Bank's Service Area only through engagement with such prospect's employer, and not through personal outreach or solicitation.
- b) Partner Food Banks will use geo-targeting when engaging in digital acquisition activities, including those directed at lookalike audiences. Such geo-targeting is not required when a Partner Food Bank is targeting a constituent who has expressed donor intent in such Partner Food Bank.
- c) Partner Food Banks may not bid on other Partner Food Bank, FANO or other member names as paid search keywords.

For purposes of this Section 1.3: (a) "expressed donor intent" includes, without limitation, past monetary donations, food donations, event attendance, volunteer service, engagement with social media vehicles, website visits, and newsletter sign-ups; (b) "geo-targeting" means delivering content to individuals based on their geographic location; and (c) "lookalike audience" means a group of individuals who share characteristics with another group.

1.4 Institutional Donors Who Fund Multiple Geographies

Notwithstanding Section 1.3, a Partner Food Bank may cross Service Area boundaries without consent of the relevant Partner Food Bank(s) for the limited purpose of soliciting grants from institutional funders such as corporations and foundations who fund multiple counties and states, provided that such funders' funding policies contemplate grants to recipients in the Service Area of such Partner Food Bank.

1.5 Partner Food Bank Initiated Campaigns in Shared Media Markets

Fundraising campaigns initiated by a Partner Food Bank(s) in a Shared Media Market may create the risk of conflict and constituent confusion. To reduce that risk, Partner Food Banks who operate in Shared Media Markets will act in good faith in line with the Guiding Principles set out in the Network Charter, and will collaborate as appropriate including, without limitation, taking the following actions:

- a) Such Partner Food Banks will make good faith efforts to establish, by March 1, 2024, an agreement relating to future campaigns initiated by Partner Food Banks in the Shared Media Market. Such agreement may address topics such as the following:
 - i) scope of the agreement (e.g., all campaigns generally, single campaigns, duration)
 - ii) coordination of community fundraising activities
 - iii) coordination of media outreach and other public communications
 - iv) allocation of funds received through joint media events and regional cause-related marketing campaigns based on donor zip code, contributions to the cost of the campaign, or other agreed-upon factors
 - v) responsibility and process for, and timing of, fund distributions from joint events and campaigns
 - vi) collection, sharing, and future use of donor data
 - vii) responsibility for donor communications including, without limitation, issuance of receipts and donor acknowledgment letters
 - viii) coordination with respect to inbound media requests and proactive media outreach in the Shared Media Market
 - ix) promotional and creative considerations such as key messages, meal claims, and co-branding requirements
 - x) related topics as the Partner Food Banks may agree
- b) If an agreement is not in place for campaigns initiated after March 1, 2024:
 - i) A Partner Food Bank initiating such a campaign will notify the other Partner Food Banks in the Shared Media Market of the nature of the campaign and its launch and completion dates, and make itself available to discuss the campaign with the other Partner Food Banks.
 - ii) The campaign-initiating Partner Food Bank and the other Partner Food Banks will share funds generated through and reasonably traceable to such campaign. Such sharing will be based on donor zip codes. The non-initiating Partner Food Bank(s) will contribute to campaign expenses, including reasonable staff time costs, in an amount proportional to the funds allocated to such Partner Food Bank(s) in accordance with this Section 1.5(b)(ii). Such contribution to campaign expenses will be made through a deduction from the allocated funds as provided in Section 1.5(b)(iii).
 - iii) The campaign-initiating Partner Food Bank will, no later than 60 days after the completion of such campaign, provide a statement to each non-initiating Partner Food Bank setting out total revenues, revenues by zip code, total campaign expenses including reasonable staff time costs, and the net amount owing to the non-initiating Partner Food Bank(s) after deduction of each non-initiating Partner Food Bank's share of such expenses. The campaign-initiating Partner Food Bank will provide such substantiating information as the non-initiating Partner Food Bank(s) may reasonably request.

- iv) The campaign-initiating Partner Food Bank will distribute funds and transfer donor data to the non-initiating Partner Food Bank(s) no later than 30 days after issuance of such statement.
- v) Partner Food Banks may at any point negotiate and enter into an agreement setting out terms applicable to such campaign that vary from the terms set out in Section 1.5(b)(i)-(iv).
- vi) Disputes relating to campaigns will be resolved in accordance with Section 16 of this Agreement provided, however, that no claims or demands regarding funds allocation or expense reimbursement relating to a campaign may be brought by a Partner Food Bank against another Partner Food Bank under this Section 1.5(b) more than 1 year after the completion date of the campaign.
- vii) For clarity, nothing in this Section 1.5(b) entitles a Partner Food Bank to funds generated through, or expense reimbursement relating to, any campaign initiated before March 1, 2024.
- viii) Nothing in this Section 1.5(b) pre-empts, limits, or otherwise affects the requirements set out in Sections 1.2 or 1.3 of this **Appendix J**.
- c) Partner Food Banks who share donor data in connection with fundraising campaigns will do so in a secure manner and in accordance with applicable privacy laws and policies.
- d) Except as provided in Sections 1.2 or 1.3 of this **Appendix J**, a Partner Food Bank may not in the future solicit donors acquired through a media event or campaign who reside outside of such Partner Food Bank's Service Area unless otherwise agreed upon with the Partner Food Bank for the Service Area where such donors reside.

For purposes of this Section 1.5 and Section 1.6, the following terms have these meanings: (a) "campaign" means a specific fundraising effort over a defined period of time in a Shared Media Market that involves a call to action and that includes television, radio, or other broadcast communications available to the entire Shared Media Market; (b) "Designated Market Areas" are the geographic regions in the U.S. in which local television viewing is measured by Nielsen, including a group of counties and zip codes that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed; and (c) "Shared Media Market" means a Designated Market Area which includes all or a portion of the Service Area of at least two Partner Food Banks.

1.6 Campaigns Initiated by Third Parties in Shared Media Markets

The requirements set out in Section 1.5 are not applicable to fundraising campaigns initiated by third parties other than the Partner Food Banks operating in a Shared Media Market. A Partner Food Bank with advance notice of such a third party campaign will: (a) notify any other Partner Food Bank in the Shared Media Market about the third party campaign and (b) educate the third party on Network structure and encourage the third party to expand the campaign to benefit other Partner Food Banks in the Shared Media Market.

1.7 Adjacent Service Areas

Partner Food Banks who operate in adjacent Service Areas but do not share media markets may wish to collaborate and coordinate on donor matters as contemplated by Section 1.5, but are not required to enter into written agreements and, for clarity, are not subject to the funds and cost sharing terms set out in Section 1.5(b).

1.8 Storytelling Involving People Facing Hunger

As a reflection of the value to the Network's mission of the stories of people facing hunger, Partner Food Banks who engage people facing hunger in story collection and incorporate

resulting stories and images in their fundraising and external communications must meet these requirements:

- a) Partner Food Banks must obtain media and photo releases from such individuals.
- b) Partner Food Banks must periodically review their approach relating to compensation of such individuals. Resources such as the FANO Neighbor Compensation Best Practices document may inform the Partner Food Bank's approach. For clarity, Partner Food Banks will have discretion to establish their approach, and are not required to provide such compensation.

FANO will make available to Partner Food Banks template releases and other resources for engaging with people facing hunger and telling their stories with respect, sensitivity, and care.

1.9 Fundraising Operational Requirements

Partner Food Banks will adhere to the following fundraising operational requirements:

- a) Partner Food Banks will record all donations in a centralized, secure constituent relationship management system.
- b) Partner Food Banks will maintain a documented and Board-approved gift acceptance policy and standard operating procedures for entering donor and gift information that meet the Payment Card Industry (PCI) Security Standards then in effect.
- c) Partner Food Banks will: (i) maintain a process for reconciling fundraising revenue data with the general ledger; (ii) carry out and document such a reconciliation at least quarterly; and (iii) include such process and practice in their accounting policies.

Such requirements are effective as of the date of this Agreement, with documentation and implementation to be completed no later than March 1, 2024.

1.10 Digital Fundraising Operational Requirements

In addition to the requirements set out in Section 1.9, Partner Food Banks engaging in digital fundraising activities will adhere to the following requirements:

- a) Partner Food Banks will maintain the capability to securely accept and process online donations through a platform that at a minimum: (i) allows customized branding and messaging on the donation form; (ii) collects and stores donor and gift information for integration into a donor database; (iii) offers more than one donation form to accept monetary donations for different funds or campaigns; (iv) provides options for both one-time and monthly gifts; and (v) generates and automatically sends a branded and customized gift acknowledgement.
- b) Partner Food Banks will have a documented process for website maintenance.
- c) Partner Food Banks will complete a website audit at least annually for broken links, accuracy of statistics and other information, stale copy, photographs, or graphic elements, adherence to Americans with Disabilities Act best practices, and other relevant matters.

Such requirements are effective as of the date of this Agreement, with documentation and implementation to be completed no later than March 1, 2024.

1.11 Capacity-Building Support

FANO will provide resources, including an implementation guide, intended to help Partner Food Banks meet the requirements set out in this **Appendix J**, increase internal capacity, facilitate best-practice sharing, and support professional development.

2. FANO Fundraising

2.1 FANO Fundraising Generally

FANO will raise sufficient funds and maintain needed resources to meet its obligations under this Agreement and to the Network. FANO will raise funds and develop resources for purposes of grants and other resource allocation to Partner Food Banks and other members.

2.2 FANO Direct Marketing Activities

In carrying out direct marketing activities, FANO will:

- a) seek to develop cause marketing campaigns that benefit both Partner Food Banks and FANO in accordance with donor preferences
- b) maintain on HungerNet an annual calendar of direct marketing activities, including acquisition and cultivation appeals
- c) highlight in external communications and marketing materials the role of Partner Food Banks as contemplated elsewhere in this Agreement
- d) use reasonable efforts through available suppression capabilities to exclude existing active Partner Food Bank donors from FANO direct marketing acquisition efforts
- e) focus acquisition efforts at a national level without geo-targeting to specific cities or designated marketing areas

2.3 Tests or Pilots

FANO will consult with a Partner Food Bank if FANO wishes to test or pilot local targeting opportunities in such Partner Food Bank's Service Area. FANO will not carry out such a test or pilot without first obtaining such Partner Food Bank's consent. In such cases, FANO and the Partner Food Bank will collaborate in planning and carrying out the campaign, including, as they determine, entering into an agreement addressing donor revenue and data sharing.

2.4 FANO Engagement with National Funds Donors

"National Funds Donors" are individuals, foundations, corporations, and other persons who donate funds and whose primary relationship is with FANO. FANO and Partner Food Banks will carry out National Funds Donor acquisition and stewardship activities as follows:

- a) FANO and Partner Food Banks recognize that National Funds Donors reside or are based in a Partner Food Bank's Service Area, and that there is an opportunity to leverage their collective resources in cultivating such donors.
- b) Partner Food Banks acknowledge FANO's responsibility to qualify, cultivate, solicit, and steward National Funds Donors. FANO will carry out such activities with respect for the role and relationships of Partner Food Banks in their Service Areas.
- c) FANO will engage Partner Food Banks in National Funds Donor strategy and interactions to the extent consistent with donor preferences. Such engagement may include, without limitation, advance notice of FANO meetings with National Funds Donors in the relevant Service Area and strategy-development discussions prior to such meetings, with a goal of identifying opportunities for collaborative donor cultivation, solicitation, and stewardship.
- d) Partner Food Banks will permit National Funds Donors, upon reasonable notice, to visit Partner Food Bank facilities, and will comply with reasonable information, reporting, meeting, and other requests from National Funds Donors.

2.5 Donor Referrals by Partner Food Banks

Partner Food Banks may be aware of local corporate donors, in-kind donors, and individual donors with the capacity and desire to give both locally and nationally or regionally. In such

cases, Partner Food Banks may refer local donors to another Partner Food Bank or to FANO for the benefit of the broader Network; in all such referrals the parties will take care to honor and maintain local donor relationships. If FANO receives such a referral, FANO will:

- a) discuss the donor relationship with the referring Partner Food Bank, prior to a donor meeting, to co-create an approach to a funding request that preserves and potentially increases the donor’s local investment with the referring Partner Food Bank
- b) seek to include the referring Partner Food Bank in the initial meeting with the donor and, at a minimum, advise the referring Partner Food Bank of later communications with the donor when consistent with donor preferences and confidentiality agreements
- c) invite the referring Partner Food Bank to later stewardship meetings with the donor in such Partner Food Bank’s Service Area when consistent with donor preferences and confidentiality agreements

2.6 FANO Donor Information Sharing

FANO will share new individual information acquired through national direct-marketing activities with Partner Food Banks on a quarterly basis in a manner consistent with donor preferences and applicable privacy laws and practices.

3. Compliance with Fundraising Laws and Best Practice Principles

3.1 Fundraising Communications

FANO and Partner Food Banks will ensure that that their respective fundraising communications, including, without limitation, communications describing match programs, are accurate, truthful, and not misleading in any respect. FANO will make available to Partner Food Banks guidance regarding accurate messaging and disclaimer language relating to match campaigns.

3.2 Compliance with Fundraising Laws

FANO and Partner Food Banks will comply with federal, state, and local laws relating to fundraising. These laws include, without limitation: (a) state corporation, federal tax, and other laws relating to use of charitable assets; (b) Internal Revenue Service substantiation and disclosure requirements; (c) Federal Trade Commission CAN-SPAM and other guidelines; (d) state charitable registration requirements in states where an organization engages in active solicitation activities; (e) COPPA and other federal and state privacy laws; (f) federal and state laws relating to advertising; and (g) federal and state laws relating to raffles and similar activities.

3.3 Fundraising Practices

In carrying out fundraising activities, FANO and Partner Food Banks will comply with the Association of Fundraising Professionals Code of Ethical Standards and the BBB’s Standards for Charity Accountability relating to fundraising, donor privacy, and informational materials, as in effect at the time, or such other standards as FANO may determine in consultation with the National Council. For reference, the current version of the BBB standards is attached as Attachment 1 to this **Appendix J**. FANO will notify Partner Food Banks of any changes in these standards as FANO becomes aware of such changes.

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Additional Resources:

- [Association of Fundraising Professionals Code of Ethical Standards](#)
- [FANO Neighbor Compensation Best Practices](#)

Attachment 1

BBB Standards for Charity Accountability**Solicitations and Informational Materials**

A fundraising appeal is often the only contact a donor has with a charity and may be the sole impetus for giving. This section of the standards seeks to ensure that a charity's representations to the public are accurate, complete and respectful.

- 15 Accurate Materials** | Have solicitations and informational materials, distributed by any means, that are accurate, truthful and not misleading, both in whole and in part. Appeals that omit a clear description of program(s) for which contributions are sought will not meet this standard. A charity should also be able to substantiate that the timing and nature of its expenditures are in accordance with what is stated, expressed, or implied in the charity's solicitations.
- 16 Annual Report** | Have an annual report available to all, on request, that includes: a) the organization's mission statement, b) a summary of the past year's program service accomplishments, c) a roster of the officers and members of the board of directors, and d) financial information that includes (i) total income in the past fiscal year, (ii) expenses in the same program, fund raising and administrative categories as in the financial statements, and (iii) ending net assets.
- 17 Website Disclosures** | Include on any charity websites that solicit contributions, the same information that is recommended for annual reports, as well as the mailing address of the charity and electronic access to its most recent IRS Form 990.
- 18 Donor Privacy** | Address privacy concerns of donors by: a) providing in written appeals, at least annually, a means (e.g., such as a check off box) for both new and continuing donors to inform the charity if they do not want their name and address shared outside the organization, and b) providing a clear, prominent and easily accessible privacy policy on any of its websites that tells visitors (i) what information, if any, is being collected about them by the charity and how this information will be used, (ii) how to contact the charity to review personal information collected and request corrections, (iii) how to inform the charity (e.g., a check off box) that the visitor does not wish his/her personal information to be shared outside the organization, and (iv) what security measures the charity has in place to protect personal information.
- 19 Cause Marketing Disclosures** | Clearly disclose how the charity benefits from the sale of products or services (i.e., cause-related marketing) that state or imply that a charity will benefit from a consumer sale or transaction. Such promotions should disclose, at the point of solicitation: a) the actual or anticipated portion of the purchase price that will benefit the charity (e.g., 5 cents will be contributed to abc charity for every xyz company product sold), b) the duration of the campaign (e.g., the month of October), and c) any maximum or guaranteed minimum contribution amount (e.g., up to a maximum of \$200,000).
- 20 Complaints** | Respond promptly to and act on complaints brought to its attention by the BBB Wise Giving Alliance and/or BBBs about fund raising practices, privacy policy violations and/or other issues.

This document sets out the current version of the standards as of March 1, 2023. The content is based on this [website](#).

Appendix K

Branding and Trademark Use

1. Introduction

FANO owns and is responsible for maintaining the Feeding America brand and other trademarks, service marks, and branding elements associated with the Network. Partner Food Banks own and are responsible for maintaining their own logos and branding elements. This **Appendix K** sets out understandings about how FANO and Partner Food Banks will share, use, and protect their mutual brand assets. “FANO Marks” and “Partner Food Bank Marks,” each as defined below, are referred to collectively as “Marks.”

2. FANO Branding

2.1 Public Identification

Partner Food Banks will hold themselves out to the public as members of the Feeding America Network.

2.2 FANO Marks

FANO grants to each Partner Food Bank a non-transferable, non-exclusive, non-sublicensable, royalty-free, and revocable license to use and display the marks identified by FANO as licensed marks on HungerNet or as otherwise communicated by FANO (collectively, “FANO Marks”) only in connection with the Partner Food Bank’s activities as a Partner Food Bank and member of the Network. Subject to the other provisions of this **Appendix K**, such uses may include, without limitation, use in websites; social media platforms; Product sourcing, fundraising, and other printed outreach materials; annual and other reports; documents and business cards; trucks and other equipment; building signage; clothing; and such other uses that are approved by FANO.

2.3 Required Use by Partner Food Banks

Partner Food Banks will use the Feeding America logo: (a) on the homepage of their websites and (b) in both print and digital versions of their annual reports. Partner Food Banks will include, on any digital page that contains the Feeding America logo, a hyperlink to the feedingamerica.org website in close proximity to such logo.

2.4 Color Logo

FANO encourages Partner Food Banks to use the full-color Feeding America logo, but Partner Food Banks may also use the black-and-white version of the logo.

2.5 Use of FANO Marks in Partner Food Bank Names

Partner Food Banks may not use FANO Marks in any corporate or d/b/a name without first obtaining FANO’s approval in accordance with the FANO policy relating to such use.

2.6 No Use in Website Domain Name or URL

Partner Food Banks may not use FANO Marks as part of a website domain name or URL.

3. Partner Food Bank Branding

3.1 Partner Food Bank Marks

Each Partner Food Bank grants to FANO a non-transferable, non-exclusive, non-sublicensable, royalty-free, and revocable license to use and display such Partner Food Bank’s name and logo (“Partner Food Bank Marks”) in connection with Network activities. Subject to the other provisions of this **Appendix K**, such uses may include, without limitation, use in co-branded messaging, cause marketing, advocacy, and educational videos and other materials; websites; social media platforms; Product sourcing, fundraising, and other printed outreach materials; annual and other reports; and such other uses that are approved by the relevant Partner Food Bank.

3.2 Use by Corporate Partners

Corporate partners may ask FANO for permission to use a Partner Food Bank logos and names in connection with local corporate support activities. FANO will notify the relevant Partner Food Bank of such a request, and may grant such approval unless the Partner Food Bank, no later than 7 days after such notice, responds and objects to the use.

4. Protection of the Marks

4.1 Branding Guidelines

FANO and Partner Food Banks will comply with reasonable branding guidelines and instructions established by the owner of the Marks including, without limitation, instructions regarding size, color, or placement of a Mark, use of the ®, TM, SM, ©, or other symbol, and use of related “under license” or similar text.

4.2 Use of Marks

FANO and each Partner Food Bank acknowledge and agree that:

- a) neither party will combine another party’s Marks with any other trademark, word, symbol, letter, design, or mark except as approved by the owner of the Mark
- b) each party may modify, add, or delete its own Marks in its sole discretion by providing the relevant other party with notice of such changes
- c) each party will change how it uses a Mark upon the reasonable request of the party owning the Mark
- d) neither party may use the other party’s name or Marks in any manner that disparages such party or that could otherwise harm the goodwill associated with such party’s name or Marks
- e) each party will remain the sole and exclusive owner of all right, title, and interest in any Mark it owns, and any and all goodwill from the Mark will inure solely to the benefit of the owner of the Mark

4.3 Registration and Enforcement

FANO and Partner Food Banks will cooperate in registration and enforcement matters as follows:

- a) Parties using a Mark will take such actions, at the expense of the party owning the Mark, that are reasonably requested by such owning party in connection with registering, protecting, maintaining, and enforcing rights in the Mark. Such actions may include, without limitation, providing materials, signing documents, or cooperating with legal proceedings.
- b) Should a party become aware of infringement or misuse of a Mark by a third party, such party will use reasonable efforts to notify the party owning the Mark.
- c) The party owning a Mark will have the sole right, but not obligation, to bring infringement or other claims relating to such Mark.

For clarity, third-party claims against FANO or a Partner Food Bank relating to use of a Mark owned by FANO or the Partner Food Bank will be addressed as provided in Sections 22.2 and 22.3 (indemnification) of the Agreement.

4.4 Representations

FANO represents and warrants to Partner Food Banks that it is the sole owner of all right, title and interest in, and in any U.S. applications and registrations for, the FANO Marks. Each Partner Food Bank represents and warrants to FANO that it is the sole owner of all right, title

and interest in, and in any U.S. applications and registrations for, its Partner Food Bank Marks. Except as otherwise provided in this **Appendix K**, FANO and each Partner Food Bank expressly disclaim all representations and warranties, express or implied, in connection with their Marks, including, but not limited to, the implied warranties of title, merchantability, and fitness for a particular purpose.

4.5 Quality Control

Partner Food Banks understand and agree that they will at all times operate in a manner consistent with the high standing, reputation, and goodwill of the Network and FANO Marks, and that the Network Charter and this Agreement set out values, principles, expectations, and requirements reflecting such high standing, reputation, and goodwill. As such, and in line with brand protection needs and trademark law principles, FANO may monitor the quality and manner in which Partner Food Banks operate and use FANO Marks. Partner Food Banks will cooperate with FANO in such activities.

5. Other Agreements

5.1 High Resolution Logos

FANO will provide Partner Food Banks with high resolution digital versions of the Feeding America logo and such other FANO Marks as may be appropriate. Partner Food Banks will provide FANO with high resolution digital versions of their current logos and names.

5.2 Termination of Right to Use Marks

The rights to use Marks may be terminated as follows:

- a) FANO may, upon written notice to a Partner Food Bank, terminate the Partner Food Bank’s right to use one or more FANO Marks if FANO reasonably determines that such use: (a) disparages any Partner Food Bank or FANO; (b) is harmful to the goodwill of any FANO Mark; (c) is inconsistent with the terms set out in this **Appendix K**; or (d) in any way dilutes the value of any FANO Mark.
- b) A Partner Food Bank may, upon written notice to FANO, terminate FANO’s right to use one or more Partner Food Bank Marks if such Partner Food Bank reasonably determines that such use: (a) disparages such Partner Food Bank; (b) is harmful to the goodwill of such Partner Food Bank’s Marks; (c) is inconsistent with the terms set out in this **Appendix K**; or (d) in any way dilutes the value of such Partner’s Food Bank’s Marks.
- c) Termination of a Partner Food Bank’s membership in the Network will result in revocation of such Partner Food Bank’s rights to use FANO Marks and FANO’s rights to use such Partner Food Bank’s Marks, and the parties will take the related actions set out in Sections 20.7 and 20.8 (termination transition activities) of this Agreement.

5.3 No Right to Membership; No Impact on Accountability Actions

For clarity, the licenses granted in this **Appendix K** do not create any rights in Partner Food Banks to maintain membership in the Network or obtain resources, services, or other support from FANO. Nothing in this **Appendix K** limits or otherwise affects the rights of FANO to take accountability actions under Sections 17 – 20 of this Agreement.

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Related Network guidance documents:

- [Feeding America Brand Guidelines](#)
- [Feeding America Member Naming Approval Process](#)

Appendix L

Network Resource Allocation

1. Resource Allocation

1.1 Policy

FANO will distribute funds and other non-food resources to Partner Food Banks and other members in accordance with the principles and practices set out in a policy made available to all members (“Network Resource Allocation Policy”). Such principles are intended to take into account the needs of people facing hunger, donor intent, Network strategic aims, and the fact of varying resources among members.

1.2 Investments in Members Other Than Partner Food Banks

Some strategic aims or disaster-response objectives may be achieved through investments in PSAs, Affiliate Food Banks, and Regional Co-ops. FANO may make such investments on the following basis:

- a) Such investments must be consistent with the resource allocation principles set out in the Network Resource Allocation Policy.
- b) An Affiliate Food Bank is eligible to receive an investment if the Affiliate Food Bank by July 1 of each year: (a) obtains from its Partner Food Bank a 12-month blanket approval of the Affiliate Food Bank applying for eligible grant opportunities and (b) confirms to FANO that its Partner Food Bank so acted and the current approval is on file. Alternatively, the Affiliate Food Bank may submit applications for specific grants; in that case, the Affiliate Food Bank must concurrently obtain and submit approval of such submission by its Partner Food Bank.
- c) A PSA is eligible to receive an investment if the PSA by July 1 of each year: (a) obtains Board approval and a resolution providing for a 12-month blanket approval to apply for eligible grant opportunities and (b) confirms to FANO that its Board so acted and the current resolution is on file. Alternatively, the PSA may submit applications for specific grants; in that case, the PSA must concurrently obtain and submit approval of such submission by its Board.
- d) FANO may invest in a Regional Co-op on a basis FANO determines is appropriate in view of the nature of such Regional Co-ops.

1.3 Cause Marketing Funds

FANO strongly encourages Partner Food Banks to share cause marketing funds with Affiliate Food Banks.

2. Resource Allocations to External Partners

Some strategic aims or disaster-response objectives may be advanced through investments in external organizations. FANO may enter into agreements and make such investments in national strategic partners, regional initiatives, or other organizations on such basis as it determines appropriate after consultation with the National Council.

3. Transparency Regarding Grant Opportunities and Awards

3.1 Opportunities

FANO will publish competitive grant opportunities available Network-wide through multiple communication channels including grant system distribution lists and a dedicated online portal

platform. FANO may also employ other channels, such as opt-in survey questions, newsletters, and webinars, to provide information about grant opportunities.

3.2 Member Monitoring Responsibility

Members will be responsible for monitoring communication outlets for announcements and other information about FANO resource allocation opportunities.

3.3 Grant Awards

In line with a goal of making investments in the Network known, visible and transparent, FANO will publish a summary of each grant award on HungerNet. The summary will include a general overview of the methodology, list of data sources, list of grantees, and award amounts, subject to any donor limitations on disclosure. Each summary will remain available on HungerNet for at least 12 months after the grant is awarded.

3.4 Annual Review

FANO will publish an annual review of all grants across the Network. The review will include a comparative analysis against the previous fiscal year to assess the degree to which grant allocations fulfill the principles set out in the Network Resource Allocation Policy.

3.5 Use and Disclosure

FANO summary reports, annual reviews, and other communications are subject to and must comply with the information sharing requirements set out in the Partner Food Bank Agreement and, as applicable, the other Operational Agreements.

4. Grant Suspension

4.1 Definition

For purposes of this Section 4, “grant suspension” means a Partner Food Bank or other member is not eligible to receive, and will not receive, a grant or other resource allocation from FANO.

4.2 Partner Food Banks

FANO may place a Partner Food Bank on grant suspension if FANO reasonably determines that the Partner Food Bank:

- a) failed to meet reporting or other requirements under any outstanding grant or other resource award from FANO
- b) failed to pay fees or other amounts owed to FANO within 90 days of the due date for such payment
- c) lost its status as a tax-exempt charitable organization under Section 501(c)(3) of the Code or otherwise no longer satisfies the Eligibility Requirements
- d) failed to comply with Partner Food Bank Agreement requirements relating to reporting and data submission
- e) failed to comply with other Partner Food Bank Agreement requirements including, without limitation, operational requirements relating to food safety, financial management, insurance, and governance, in all cases in a manner that risks or could risk the reputation of the Network

FANO may also place a Partner Food Bank on grant suspension if such Partner Food Bank is on probation under Section 18 or suspension under Section 19 of its Partner Food Bank Agreement.

4.3 Affiliate Food Banks, PSAs, and Regional Co-ops

FANO may place an Affiliate Food Bank, PSA, or Regional Co-op on grant suspension if FANO reasonably determines that the relevant organization:

- a) failed to meet reporting or other requirements under any outstanding grant or other award from FANO
- b) failed to pay fees or other amounts owed to FANO within 90 days of the due date for such payment
- c) no longer satisfies the requirements for membership in the Network
- d) in the case of PSAs and Regional Co-ops, failed to comply with the Operational Agreement between the PSA or Regional Co-op and FANO in a manner that risks or could risk the reputation of the Network
- e) in the case of Affiliate Food Banks, failed to comply with the Operational Agreement between the Affiliate Food Bank and its Partner Food Bank in a manner that risks or could risk the reputation of the Network
- f) in the case of PSAs and Affiliate Food Banks, the relevant Board or Partner Food Bank, respectively, withdraws the approval contemplated by Section 1.2

FANO may also place a PSA or Regional Co-op on grant suspension as may be set out in its Operational Agreement with FANO.

4.4 Notice

FANO will provide written notice of grant suspension to the member. The notice will specify the reasons for the grant suspension and the remedial and other actions necessary for relief from the grant suspension.

4.5 Relief from Grant Suspension

FANO may lift the grant suspension, at its discretion, upon finding that the member has adequately addressed the problem or problems giving rise to the grant suspension. FANO may condition such relief as it determines appropriate. FANO will provide written notice of such relief to the member.

5. FANO Discretion; No Appeal

For clarity, FANO has full discretion in making grant and other resource-allocation decisions. Such decisions are final, may not be appealed or otherwise contested in any venue, and are outside the scope of the relationship management process and legal dispute resolution arrangements contemplated by the Operational Agreements.

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Related Network guidance documents:

- [FANO Network Resource Allocation Policy](#)

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Appendix M

Relationship Management

1. Introduction

Relationships among members, and the manner in which members resolve conflicts among themselves, are of central importance to Network success. The conflict resolution arrangements set out in this document reflect these beliefs:

- a) Discussion and resolution by the disputing parties is better than resolution by third parties through a formal legal process.
- b) The Network will be made stronger from having peers involved to listen, ensure that members feel heard and understood, and help the disputing parties reach resolution.
- c) Disputes should be resolved with reference to the Shared Beliefs and Guiding Principles set out in the Network Charter.
- d) All participants in the process – including the disputing parties and the Network peers consulting with the disputing parties – are expected to act in good faith.
- e) Disputes provide an opportunity to learn as a Network, gain a better understanding of points of conflict within the Network, and create opportunities to continuously improve and strengthen the Network.

The process set out in this document is intended to operationalize these beliefs and expectations.

2. Relationship Integrity Committee

2.1 Establishment and Composition

As soon as practicable after the effective date of the Network Charter, the National Council and FANO will establish a Relationship Integrity Committee (“RIC”). The RIC will be composed as follows:

- a) The RIC will be composed of at least 9 individuals (“RIC Members”).
- b) The RIC will include four CEO/Executive Directors of Partner Food Banks, one CEO/Executive Director of an Affiliate Food Bank, one PSA representative (staff or Board member), and one Regional Co-op representative (staff or Board member).
- c) The RIC will include two FANO executives designated by the CEO or COO and who typically would have senior leadership roles relating to Network matters and member engagement (e.g., Chief Network Officer, Vice President for Member Engagement).
- d) RIC Members will serve for a 2-year term. They may serve for up to 2 consecutive terms, and are eligible to be reappointed after a 1-year break in service on the RIC. Initial term lengths may vary such that roughly half of the RIC Members are appointed or re-appointed each year.
- e) The RIC will have 2 co-chairs (“Co-Chairs”). The Co-Chairs may both be representatives of Partner Food Banks, Affiliate Food Banks, PSAs or Regional Co-ops, or one may be such a representative and the other a FANO representative.
- f) The Co-Chairs will serve for a 1-year term. A Co-Chair may serve for up to 2 consecutive terms, and is eligible to be reappointed after a 1-year break in service as a Co-Chair.

2.2 Appointments

RIC Members will be appointed as follows:

- a) The National Council will establish an application process for the Co-Chairs and other RIC Member positions.
- b) The National Council in its discretion may contact individuals who did not apply and make inquiry about possible RIC Member and Co-Chair service.
- c) The National Council will review the applications and appoint the non-FANO member representatives. The National Council and FANO will set initial term lengths in line with Section 2.1(d).
- d) FANO will select the FANO representatives.
- e) The National Council will appoint 2 RIC Members to serve as Co-Chairs.
- f) The National Council will seek to appoint RIC Members and Co-Chairs with a range of backgrounds, subject matter expertise, and experiences, with a goal of having a diversity of perspectives on the RIC, and in line with the Shared Beliefs of shared leadership and inclusivity.
- g) The National Council will seek to appoint Co-Chairs with demonstrated listening and facilitation skills.

The National Council may seek recommendations from and consult with members, including FANO, in selecting the Co-Chairs and non-FANO member representatives.

2.3 Participation in RIC

RIC Members, including FANO staff representatives, will participate in conflict resolution training, serve as contact persons for sharing conflict resolution and relationship tools and best practices, and serve as mentors for other members or as subject-matter advisors to the RIC.

2.4 Resignation and Removal

Any RIC Member may resign at any time by giving notice to the Co-Chairs. A RIC Member may be removed from membership as follows:

- a) A RIC Member appointed by the National Council may be removed from the RIC at any time, with or without cause, by the National Council.
- b) A RIC Member appointed by FANO may be removed from the RIC at any time, with or without cause, by FANO.

The National Council or FANO, as the case may be, may appoint individuals to fill any vacancies and serve the remainder of the term.

3. Goals and Role

3.1 Goals

The RIC has three main goals:

- a) create a safe and confidential space for all parties involved in a conflict to come to a resolution
- b) facilitate informal resolution of disputes through providing tools, guidance, and experience-based advice

- c) collect information to help inform the Network about issues, needs for possible amendments to the Network Charter or Operational Agreements, and future Network direction and strategies

3.2 Actions and Role

In engaging with the disputing parties, the RIC will seek to:

- a) defuse the situation and build trust through listening closely and validating concerns
- b) ask guiding questions rooted in the Shared Beliefs and Guiding Principles of the Network Charter
- c) find agreement on the basic facts
- d) offer perspectives from colleagues who share the Network's mission, understand operational realities, are subject to the same contractual obligations, and may have experience with their own disputes
- e) suggest tools and approaches for resolving the dispute
- f) describe options for next steps if the parties cannot resolve the dispute

For clarity, the RIC serves a consultative, facilitative function only. It is not a tribunal empowered to decide the dispute, and its perspective, ideas, and recommendations do not have binding legal effect.

4. Scope

4.1 Scope

Members, including FANO, will refer matters to the RIC as provided in the relevant Operational Agreement or other agreements between members.

4.2 Disputes Out of Scope

The following matters are out of scope of the RIC process:

- a) matters specifically identified in the relevant Operational Agreement or other agreement as outside the scope of such process
- b) appeals of FANO grant and other resource allocation decisions
- c) disputes internal to an organization, such as employee complaints about working conditions or personnel decisions, or disagreements between a Board and a CEO/Executive Director

4.3 Discretion

The RIC has discretion to determine whether a matter is within the scope of the process. For clarity, the RIC may not accept matters that are outside of the scope of the RIC process as set out in this Section 4.

4.4 Shared Beliefs and Guiding Principles

A failure by FANO or a member in engaging with another member to act in a manner consistent with the Shared Beliefs and Guiding Principles of the Network Charter may not, in and of itself, give rise to a non-adherence finding or breach of contract claim under the relevant Operational Agreement, or to a tort or other claim. Such conduct, however, is within the scope of the RIC process, and may be brought forward and addressed as set out in this **Appendix M**.

5. Process

5.1 Commencement of Process

The RIC process will commence as follows:

- a) Each party will complete a document in the form provided by FANO. The form will require information about the parties, the nature of the dispute, and the prior efforts made to resolve it.
- b) The parties will submit the forms to the Co-Chairs.
- c) The RIC will review the forms and may make such other inquiries as it believes appropriate.
- d) The RIC will respond to the parties no later than 30 days after receipt of the forms.
- e) If the RIC concludes that the parties have not made sufficient efforts to resolve the dispute as may be provided in the relevant Operational Agreement or otherwise, the RIC will direct the parties to carry out such efforts, with the right to return to the RIC should the parties not resolve the dispute within 30 days after receipt of such notice from the RIC.
- f) If the RIC concludes that only one of the parties has made an effort to resolve the dispute, then the RIC will evaluate the situation on a case-by-case basis and take such action as it believes appropriate including, without limitation, advising FANO of the situation.
- g) If the RIC determines that the matter is out of scope, it will so advise the parties.
- h) If the RIC concludes that the initial submissions are adequate, it will advise the parties about a meeting or other next step in the process (the date of such notice is referred to as the "Confirmation Date").

FANO will maintain a record of the forms and related communications.

5.2 Process

Unless otherwise determined by the RIC in a particular matter, the RIC process will then operate as follows:

- a) The RIC will convene the parties for an in-person or video-conference meeting to take place no later than 30 days after the Confirmation Date.
- b) If the RIC holds an in-person meeting with the parties, each party will pay its own expenses, and FANO will pay the expenses of RIC Members.
- c) Establishment of a quorum for RIC action requires the presence of least 40% of the total number of RIC Members then in office, of which at least 60% must be representatives of Partner Food Banks, Affiliate Food Banks, PSAs, or Regional Co-ops.
- d) The RIC may reconvene the parties for additional discussion as it determines.
- e) The RIC may at any time require the parties to submit additional documents and information.
- f) The parties may not bring legal counsel to any meetings with the RIC or individual RIC Members.

- g) The RIC and individual RIC Members may communicate on a separate basis with each disputing party both during and outside of RIC meetings.
- h) The RIC may assign lead responsibility for a particular dispute to a committee of RIC Members.
- i) The RIC may consult with subject-matter experts and consider such other information as it determines appropriate.
- j) RIC Members have no responsibility for or any duty to independently investigate and verify any statement or representation made by, or other information provided by, a member or FANO in the course of a RIC process.
- k) RIC Members who have or may have a conflict of interest will recuse themselves from participation in appropriate cases, it being understood that FANO representatives will not automatically be considered to have conflicts in cases where FANO is one of the disputing parties.
- l) The RIC at any time may decide that the matter is best addressed through other channels, discontinue the process, and step away from the matter. The RIC may consult with FANO in making that decision. The RIC will notify the parties of such a decision to discontinue the process.
- m) Offers, promises, conduct, and statements made by the parties in the course of the RIC process will be inadmissible for any purpose in any arbitration or other proceeding involving the parties.

5.3 Dispute Not Resolved After Meeting with RIC

If the dispute is not resolved within 90 days after the initial meeting with the RIC or such other date as the RIC may determine in consultation with the parties (“Non-Resolution Date”), then either party can choose to end the RIC process by providing notice to the other party. If a party so chooses to end the RIC process, or if the RIC discontinues the process, then the disputing parties will take the dispute resolution actions set out in Section 6. All applicable statutes of limitation and defenses based upon the passage of time will be tolled until 30 days after the Non-Resolution Date.

5.4 Intellectual Property Protection

Nothing in or contemplated by this **Appendix M** limits the ability of members, including FANO, to seek and obtain injunctive or other relief involving their respective trademark, confidentiality, and other intellectual property rights.

6. Mediation and Arbitration

6.1 Dispute Resolution Actions

If the RIC process concludes without resolution of the dispute, or if an Operational Agreement specifies that the parties mediate or arbitrate certain disputes, then the disputing parties will take one of the following actions:

- a) If both parties agree, they will submit the dispute to mediation.
- b) If both parties agree, they will bypass mediation and instead submit the dispute to binding arbitration.
- c) If one party does not agree to mediation, they will submit the matter to binding arbitration.
- d) If the parties choose to mediate the dispute and the mediation does not result in resolution of the dispute, they will then submit the dispute to binding arbitration.

The parties will make such decisions and submissions no later than 30 days after the date of the relevant notice of discontinuation of the RIC process. Mediation and arbitration arrangements are set out in Section 6.2.

6.2 Mediation and Arbitration

Mediations and arbitrations will be carried out as follows:

- a) Unless otherwise agreed by the disputing parties: (i) JAMS will serve as the mediation and arbitration service; (ii) the parties will determine the location of the proceedings if the parties and JAMS decide to meet in person; (iii) the process will be conducted in accordance with procedures, such as JAMS streamlined or expedited procedures, intended to speed the process and minimize costs; and (iv) the parties will appoint a single mediator or arbitrator.
- b) The disputing parties will request that JAMS offer a fair representation of diverse candidates from which to choose a mediator or arbitrator, and, if practicable, offer candidates who have experience in cases involving charitable organizations.
- c) The parties will take diversity and experience considerations into account in appointing a mediator or arbitrator.
- d) The arbitrator may not award any incidental, indirect, consequential, punitive, or exemplary damages.
- e) Except as provided in Section 6.3, the parties will share equally in JAMS' fees and costs, and be responsible for their own fees and costs, regardless of the result.

The decision in an arbitration will be final and binding, and no appeal may be taken. A party may, however, seek judicial enforcement of an arbitration decision, and may seek injunctive or other relief in aid of arbitration. If enforcement is ordered, then the party seeking enforcement will be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees and costs, incurred by the party seeking enforcement in the action or proceeding. The parties will keep confidential the existence and nature of any mediation or arbitration proceeding or award except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an arbitration award or its enforcement, or unless otherwise required by law or judicial decision.

6.3 Payment of Arbitrator and Attorneys' Fees in Certain Cases

Except in cases where an Operational Agreement provides that use of the RIC process is optional and requires mutual agreement of the disputing parties, if a party refused to participate in the RIC process and is not the prevailing party in a resulting arbitration, then the prevailing party will be entitled to recover from such party all costs and expenses, including reasonable attorneys' fees and costs, incurred by the prevailing party in the action or proceeding. Attorneys' fees and costs include paralegal fees, expert witness fees, and copy and delivery costs. The non-prevailing party will also all pay all fees and reimbursable expenses of the arbitrator.

7. Learning from Disputes

7.1 RIC Communication with National Council and FANO

The RIC will take note of issues and concerns that are recurring in the disputes coming to the RIC. The RIC may discuss such issues with the National Council and FANO. The RIC may recommend to the National Council and FANO consideration of a near-term amendment to the Network Charter or relevant Operational Agreement, issuance of near-term guidance to relevant members, development of new training modules or materials, or other actions.

7.2 Communication to Members

FANO will prepare and make available to members, at least annually, a redacted report or set of case studies about the disputes that came to the RIC during the prior year. FANO will

ensure that the content of such reports and studies is consistent with the requirements set out in Section 8 of this **Appendix M**.

8. Confidentiality

Except as provided in this Section 8, RIC Members and FANO will treat as confidential:

- a) the identities of members who engage the RIC
- b) the nature of the RIC process or other information that could enable a third party to determine the identities of such members
- c) information provided by members in the course of the RIC process
- d) the outcomes of such process

RIC Members may communicate with FANO as provided in Section 5.2. The parties may disclose such information as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an arbitration award or its enforcement, or as otherwise required by law or judicial decision.

9. No Liability for RIC Members

No RIC Members nor their employers will have any liability to any member or to FANO, or to any director, officer, or employee of any member or FANO, for any action taken or not taken by such RIC Member in their capacity as a RIC Member. FANO and other members waive and release any and all such claims against current and future RIC Members and their employers, and agree not to sue any RIC Member or their employer on the basis of such waived and released claims. RIC Members will have no obligation to monitor a member's or FANO's conduct, or guarantee the performance by FANO or any member under this Agreement, following completion of a process contemplated by this **Appendix M**.

10. Resources

FANO will develop relationship management tools, facilitate peer networking opportunities and mentoring/coaching relationships, and serve as a consultative resource to members, all with a goal of sharing best practices and improving relationship management skills across the Network. FANO will provide on HungerNet information about the RIC and the relationship-management process and resources generally.

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Appendix N

National Council Role

1.1 National Council

The National Council is the elected body of representatives and appointed FANO staff charged with representing the Network. The National Council acts in the interest of the entire Network at large as its constituents. The National Council's structure, composition, and operating practices are set out in a document ("National Council Policies") available to all members.

1.2 Purpose

The National Council facilitates collaboration among all members and FANO to develop and advance strategies that support a shared vision of an America where no one is hungry. It is responsible for ensuring all Network perspectives are fully considered in shared space decision making. The National Council has one essential role: to strengthen and support the Network as a whole.

1.3 Authority

Partner Food Banks and FANO expressly consent to the National Council's role in the Network as set out in the National Council Policies, the Network Charter, and this Agreement.

1.4 Network Engagement Framework

The National Council drives network engagement by facilitating a system of committees comprised of network members, including CEOs/Executive Directors and staff, and FANO staff, in support of the Network's vision and mission. The Network Engagement structure typically utilizes National Council committees, task forces, and advisory committees based on their purpose, duration, and scope of the work:

- National Council committees are generally standing committees established by the National Council to serve in an advisory role to the National Council.
- Task forces are ad-hoc and time-limited and are established by the National Council as a method of delegating specific National Council roles and responsibilities, as outlined in the National Council Policies, such as facilitating consultative processes, determining success criteria, defining test parameters, and proposing operating models. Task forces are co-led by a FANO executive and a member CEO/Executive Director and are responsible to report progress and deliver recommendations to the National Council.
- Advisory committees are established to providing ongoing input on projects, programs, or strategies. They are typically convened by the National Council and/or a member to help guide and inform their work.

The National Council Policies contain more information about committee and task force functions, composition, and operations. The National Council may amend the National Council Policies as provided in such policies.

1.5 Relationship Integrity Committee

As provided in **Appendix M**, the National Council appoints and can remove member representatives to the RIC and appoints the co-chairs of the RIC. **Appendix M** also provides that the RIC may discuss with the National Council issues recurring in matters brought to the RIC, and make recommendations regarding National Council consideration of contract amendments, issuance of contract guidance, or other actions.

1.6 National Council Chair Engagement with FANO Board

As provided in the FANO bylaws, the National Council Chair will be a non-voting member of the FANO Board.

1.7 Funding

FANO will provide adequate funding and other support, as it reasonably determines, for National Council operations. Such support may include, without limitation, paying for travel expenses, hosting meetings, and providing administrative support.

1.8 National Council Role under Agreement

The National Council reviews certain decisions, requests, and policy matters arising under this Agreement. For convenience, such matters are set out in this table:

Area	Matter	Reference
FANO Board	Participate in FANO Board meetings (National Council Chair)	Section 13.3
Adequacy of Service	Work with FANO to develop new measures for evaluating need, access, equity, and service adequacy	Appendix B (Section 6.1)
	Review and decide Partner Food Bank appeals of FANO denials of requests for extenuating circumstances for Inadequate Service	Section 16.5
Product Sourcing and Sharing	Consult with FANO regarding methodologies and systems for distribution of Product at the national level	Section 11.1
	Review each FANO Sourcing Plan with FANO	Appendix C (Section 2.6)
	Consult with FANO regarding updates to Platform	Appendix C (Section 3.1)
Product Handling and Food Safety	Approve future updates to food safety standards used in the third party food safety audit outside of federal regulations	Appendix D (Section A.3.4)
Product Use and Distribution Partners	Approve shared maintenance, referral, and delivery fees	Appendix E (Sections K.1.2 and K.1.3)
	Review and decide joint Affiliate Food Bank/Partner Food Bank appeals of FANO non-agreement to go forward with review of possible designation of Affiliate Food Bank as a Partner Food Bank	Appendix E (Section F.5.2)
Network Standards Reviews	Work with FANO to research and develop approaches to issues that challenge multiple Partner Food Banks	Section 10.4(f)
	Receive notice from FANO of material non-adherence by a food bank	Section 10.6
Information Sharing, Protection, and Disclosure	Approve required reports, and any changes to such reports (e.g., NAR and QPR)	Appendix I (Section 2.1)
	Develop plan and timeline for Network-wide transition to automated data reporting	Appendix I (Section 3.2)
	Approve surveys of members regarding data matters and launch of opt-in programs	Appendix I (Section 3.5)

	Develop policy regarding use and disclosure of Partner Food Bank operating data	Appendix I (Section 5)
	Receive notice from FANO of material non-adherence by a food bank	Appendix I (Section 7.4)
Fundraising	Consult with FANO regarding fundraising standards (e.g., BBB Standards for Charity Accountability)	Appendix J (Section 3.3)
Resource allocations to external partners	Consult with FANO on investments in external organizations	Appendix L (Section 2)
FANO reporting	Consult with FANO regarding FANO reports to Partner Food Banks	Section 11.8
Contract implementation	Consult with FANO regarding contract implementation materials, systems, and procedures.	Section 11.11
FANO external statements	Review FANO process for developing and issuing external statements	Section 12.8
	Review FANO public meal claim process	Section 12.9
Relationship management	Appoint member representatives to RIC	Appendix M (Section 2.2)
	Appoint Co-Chairs of RIC	Appendix M (Section 2.2)
	Remove any RIC Member it appoints, with or without cause, and appoint individuals to fill any vacancies caused by such removal or resignation	Appendix M (Section 2.4)
	Discuss issues brought forward by RIC and as appropriate recommend development of amendments, guidance, or training	Appendix M (Section 7.1)
Amendment of Partner Food Bank Agreement	Engage in review of Agreement every 2 years for possible amendment	Section 14.2
	Consult with Partner Food Banks about possible member-initiated amendments	Section 14.1
	Review Partner Food Bank-proposed amendments	Section 14.1
	Propose amendments	Section 14.2
	Review FANO-proposed amendments	Section 14.2
	Respond to Partner Food Bank questions and facilitate input about amendments proposed for adoption, and set length of voting process	Section 14.3
	Review and approve FANO-proposed technical amendments	Section 14.6
Amendment of Charter	Consider periodically whether Charter requires amendment	Charter Amendment Policy

	Propose amendments to the Charter, and review amendments initiated by FANO, other members, and the RIC	Charter Amendment Policy
	Respond to member questions and facilitate member input about amendments proposed for adoption, and set length of voting process	Charter Amendment Policy
New contract	Develop with FANO plan for end-of-term comprehensive review and development of new contract	Section 15.1
	Approve extension of current term to accommodate new contract development	Section 15.2
	Seek Partner Food Bank approval of proposed new contract, and extend such contract to all Partner Food Banks	Sections 15.3; 15.4
Extenuating circumstances for inadequate service	Review and decide Partner Food Bank appeals of FANO decisions denying requests for extenuating circumstances related to inadequate service	Section 16.5
Suspension	Approve extension of suspension	Section 19.6
Termination	Approve termination for failure to remedy deficiencies	Section 20.2
	Approve termination for harm to Network	Section 20.3
	Consult with FANO regarding readmission process	Section 20.10
Contract assignment or similar transactions	Approve requests by Partner Food Banks or FANO relating to contract assignment, merger, or similar transactions	Section 23.12

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Related Network guidance documents:

- [National Council Policies](#)

Appendix O

Glossary

1.1 Scope

This Glossary sets out the meanings of certain (not all) terms used in the Network Charter and the Operational Agreements. As used in this Glossary, the term “Partner Food Bank Agreement” refers to the Operational Agreement between FANO and each Partner Food Bank, and mentions of Appendices refer to Appendices of the Partner Food Bank Agreement.

1.2 Definitions

The following terms have these meanings:

- “Affiliate Food Bank” means a food bank that is considered an Affiliate Food Bank of a Partner Food Bank under that Partner Food Bank’s Operational Agreement with FANO. Affiliate Food Banks are tax-exempt nonprofit organizations that fulfill primary Partner Food Bank functions on behalf of a Partner Food Bank in a defined Service Area, as contemplated by Section F of **Appendix E** of the Partner Food Bank Agreement.
- “Affiliate Food Bank Program” has the meaning given it in Section F.1.3 of **Appendix E** of the Partner Food Bank Agreement.
- “Agency Partner” means a Public Charity or Church that operates a hunger relief program under its own organizational authority and in partnership with a Partner Food Bank, as contemplated by Section C of **Appendix E** of the Partner Food Bank Agreement.
- “Agency-Sponsored Program” has the meaning given it in Section C.2.2 of **Appendix E** of the Partner Food Bank Agreement.
- “BBB” means the Better Business Bureau.
- “Board” means the Board of Directors or other governing body of a member, Distribution Partner, or other organization.
- “Board Chair” means the person who serves as chair of a Board. Organizations may title such position as “Chair,” “Chairperson,” or “President.”
- “CEO/Executive Director” means the most senior compensated staff member of an organization. Organizations may title such position as “Chief Executive Officer,” “CEO,” “Executive Director,” or in some cases “President.” For clarity, an organization may appoint two individuals to serve as co-CEO/Executive Directors.
- “Church” means an organization that meets the majority of the attributes considered by the IRS in determining whether an organization is a church for federal tax purposes.
- “Clean Room” has the meaning given it in Section B.1 of **Appendix D** of the Partner Food Bank Agreement.
- “Code” means the Internal Revenue Code in effect as of the relevant date.
- “CSFP” means the Commodity Supplemental Food Program.
- “County” means a county or equivalent political subdivision of state such as borough, township, parish, and consolidated city-county unit.
- “Designated Market Areas” are the geographic regions in the U.S. in which local television viewing is measured by Nielsen, including a group of counties and zip codes that form an exclusive geographic area in which the home market television stations hold a dominance

of total hours viewed, as provided in Section 1.5 of **Appendix J** of the Partner Food Bank Agreement.

- “Difference in resources” applies to organizations and describes the different resources available to different types of members.
- “Distribution Partner” means a Partner Food Bank’s Agency Partners, Partner Food Bank Programs, Affiliate Food Banks, Redistribution Organizations, and other distribution partners as contemplated by **Appendix E** of the Partner Food Bank Agreement.
- “Donated Product” means Product donated in accordance with Section 170(e)(3) for the purpose of supporting the ill, needy, or infants.
- “Eligibility Requirements” has the meaning set out in Section 5.4 of the Partner Food Bank Agreement.
- “Enterprise Resource Planning System” or “ERP System” means an interface such as Ceres, Primarius, NetSuite, or other system used by a Partner Food Bank to manage inventory and Product donor interactions, as provided in Section F.1 of **Appendix D** of the Partner Food Bank Agreement.
- “Equality” with respect to resource allocation means giving every recipient the same thing.
- “Equity” or “equitable” applies to people facing hunger and means that people might need access to different types of services and/or different amounts of resources in order to achieve the same outcome as others. For purposes of the Operational Agreements, “equity” and “equitable” are not used to describe the differences in organizational access to resources. FANO may provide more information on this topic in a separate resource.
- “FANO” means Feeding America, an Arizona corporation.
- “FANO Board” means the FANO Board of Directors.
- “FANO Marks” means the Feeding America marks identified by FANO as licensed marks on HungerNet or as otherwise communicated by FANO, as provided in Section 2.2 of **Appendix K** of the Partner Food Bank Agreement.
- “FANO Product Category” means specific designations for types of food and non-food as used for Product reporting in ERP Systems and the Platform, as provided in Section F.1 of **Appendix D** of the Partner Food Bank Agreement.
- “FANO Sourcing Plan” means a strategic Product sourcing plan prepared annually by FANO, as contemplated by Section 2.6 of **Appendix C** of the Partner Food Bank Agreement.
- “FDA” means the United States Food and Drug Administration.
- “Goal Factor” means the number of food insecure people in a Partner Food Bank’s Service Area divided by the total number of food insecure people in the United States.
- “Grant suspension” has the meaning given to it in Section 4.1 of **Appendix L** of the Partner Food Bank Agreement.
- “Guiding Principles” are set out in the Network Charter and are intended to ensure that the Network operates according to the Shared Beliefs.
- “Host Site” means a non-profit, for-profit, municipality, educational institution or other organization operating a hunger relief program under a member’s Public

Charity status, as contemplated by Section D.1.1 of **Appendix E** of the Partner Food Bank Agreement.

- “HungerNet” means the intranet site or any successor site maintained by FANO as a communication channel, knowledge storehouse, and collaboration tool for the Network.
- “Inadequate Service” has the meaning given it in Section 17.1 of the Partner Food Bank Agreement.
- “IRS” means the Internal Revenue Service.
- “JAMS” means JAMS, a private provider of alternative dispute resolution services.
- “Local Agreement” means a written agreement between two or more Partner Food Banks who operate in a Shared Service Area. Requirements relating to Local Agreements are set out in Section 2.5 of the Partner Food Bank Agreement.
- “Local Product Donor” means a Product donor that is not a National Product Donor.
- “Members” means Partner Food Banks, Affiliate Food Banks, RDOs, PSAs, Regional Co-Ops, and any other organizations approved under the Network Charter as members of the Network.
- “MPIN” has the meaning given it in Section 17 of the Partner Food Bank Agreement.
- “National Council” means the member-elected body of representatives and appointed FANO staff charged with representing the Network.
- “National Council Policies” means the document, available on HungerNet, that sets out the National Council’s structure, composition, and operating practices.
- “National Disaster Relief Fund” has the meaning given it in Section 3.1 of **Appendix H** of the Partner Food Bank Agreement.
- “National Funds Donors” are individuals, foundations, corporations, and other persons who donate funds and whose primary relationship is with FANO.
- “National Product Donor” means a Product donor with regional or national operations whose primary relationship is with FANO. National Product Donors include, without limitation, manufacturers, distributors, retailers, wholesalers, produce businesses, warehouses, co-packers, non-profit organizations and other food or grocery related businesses.
- “Network” means the Feeding America Network.
- “Network Charter” means the Network Charter, effective as of March 1, 2023, to which all members, including FANO, are parties.
- “Network Activity Report” or “NAR” means a report, required to be completed annually by Partner Food Banks and submitted to FANO, that provides general information about financial status, personnel, facility, Distribution Partners, and other matters. The NAR is referenced in Section 2.1 of **Appendix I** of the Partner Food Bank Agreement.
- “Network Reserve” has the meaning given it in Section 11.3 of the Partner Food Bank Agreement.
- “Network Resource Allocation Policy” means the policy adopted by FANO that sets out principles, considerations, and procedures governing its distribution of funds and other

resources to members, as provided in Section 1.1 of **Appendix L** of the Partner Food Bank Agreement].

- “Network Standards” has the meaning given it in Section 5.7 of the Partner Food Bank Agreement.
- “Network Standards Reviews” means reviews by FANO of a Partner Food Bank’s operations, facilities, and organization, as provided in Section 10 of the Partner Food Bank Agreement.
- “Operational Agreements” has the meaning given it in the Charter. Operational Agreements include the Partner Food Bank Agreement between FANO and each Partner Food Bank, the Affiliate Food Bank Agreement between Partner Food Banks and their Affiliate Food Banks, the Redistribution Organization Agreements between Partner Food Banks and their RDOs, the Partner State Association Agreement between FANO and PSAs, and the Regional Cooperative Agreement between FANO and Regional Co-ops.
- “Operational Response Plan” means a plan periodically prepared by Partner Food Banks for responding to food access needs in a Service Area, as contemplated by Section 4.1 of **Appendix B**.
- “Parent Organization” has the meaning given it in Section 4.1 of **Appendix F** of the Partner Food Bank Agreement.
- “Partner Food Bank” means a tax-exempt nonprofit organization that solicits, receives, inventories, stores, and distributes food and other products to anti-hunger organizations and people facing hunger, and who was a party to a member contract with FANO in effect at the time of adoption of the Network Charter or who later becomes a party to a Partner Food Bank Agreement.
- “Partner Food Bank Marks” means a Partner Food Bank’s name and logo, as provided in Section 3.1 of **Appendix K** of the Partner Food Bank Agreement.
- “Partner Food Bank Program” means any hunger relief program operated at or in conjunction with a Host Site under the Partner Food Bank’s Public Charity status, as contemplated by Section D.1 of **Appendix E** of the Partner Food Bank Agreement.
- “Partner State Association” or “PSA” means any association of food banks that is a tax-exempt nonprofit organization (a) active in a specified geographic area; (b) all of whose members share a core function of food banking and food distribution to people facing hunger; and (c) a majority of whose members are Partner Food Banks.
- “PCI Security Standards” means the Payment Card Industry Data Security Standard relating to security of payment card information.
- “Platform” means a technology platform maintained by FANO that enables Partner Food Banks and other members to learn about, obtain, and share Product available from donors and vendors including, without limitation, Product offered to a Partner Food Bank that the Partner Food Bank cannot receive or distribute, as contemplated by Section 1.3 of **Appendix C** of the Partner Food Bank Agreement.
- “Prior Contract” means the Member Contract, dated October 1, 2014, between FANO and each Partner Food Bank.
- “PPO” means pick and pack out, as provided in Section K.1.4 of **Appendix E** of the Partner Food Bank Agreement.
- “Produce” means fruits and vegetables coming from growers arriving in a raw state, fresh and not processed. Produce does not include fresh produce rescued from retailers and

excludes produce that has been transformed through a process such as canning, jarring, drying, dehydration, or freezing.

- “Product” means all food and grocery products procured by FANO or Partner Food Banks, including edible foods and non-food products such as paper goods and personal care items.
- “Product Handling Facility” means any location, owned or leased, managed by a member, that receives, handles, sorts, stores, or distributes Product to Distribution Partners, as contemplated by Section A.3.1 of **Appendix D** of the Partner Food Bank Agreement.
- “Product Sourcing Plan” means a plan prepared by a Partner Food Bank relating to its Product sourcing activities in its Service Area, as contemplated by Section 2.1 of **Appendix C** of the Partner Food Bank Agreement.
- “Public Charity” means a nonprofit organization that is tax-exempt under Section 501(c)(3) of the Code and that is classified as a public charity under Section 509(a)(1) or (a)(2) of the Code.
- “Purchased Product” means Product purchased by a member.
- “Quarterly Pulse Report” or “QPR” means a quarterly report, completed by all Partner Food Banks and submitted to FANO, which provides specific information about poundage received and distributed, and other information related to calculating meal distribution, in order to provide aggregate data about the Network and comparison data for members. The QPR is referenced in Section 2.1 of **Appendix I** of the Partner Food Bank Agreement.
- “Redistribution Organization” or “RDO” means a tax-exempt nonprofit that under contract assists a Partner Food Bank in sourcing, distribution, and Distribution Partner management, as contemplated by Section E of **Appendix E** of the Partner Food Bank Agreement.
- “Regional Cooperatives” or “Regional Co-ops” are regional sourcing and distribution hubs that are operated or controlled by Partner Food Banks, PSAs, or tax-exempt nonprofits controlled by Partner Food Banks.
- “RIC” means the Relationship Integrity Committee, as provided in Section 2.1 of **Appendix M** of the Partner Food Bank Agreement.
- “RIC Members” has the meaning given to it in Section 2.1 of **Appendix M** of the Partner Food Bank Agreement.
- “Section 170(e)(3)” means the section of the Code relating to the deductibility of Product donations; it covers such topics as the organizations eligible to receive, and allowable uses of, such donations.
- “Service Area” means a geographic area in which a Partner Food Bank has exclusive rights, as provided in Section 2.1 of the Partner Food Bank Agreement.
- “Service Area Assessment” means a periodic assessment by Partner Food Banks of food insecurity rate and food access barriers for their Service Areas, as contemplated by Section 3 of **Appendix B** of the Partner Food Bank Agreement.
- “Shared Beliefs” are set out in the Network Charter and are the mutually agreed upon assumptions that underpin the Network’s strategies, decisions, behaviors, and actions.

- “Shared Media Market” means a Designated Market Area which includes all or a portion of the Service Area of at least two Partner Food Banks, as provided in Section 1.5 of **Appendix J** of the Partner Food Bank Agreement.
- “Shared Service Area” means a geographical area that is included in the Service Areas of two or more members, as contemplated by Section 2.5 of the Partner Food Bank Agreement.
- “Split county” has the meaning given it in Section 2.6 of the Partner Food Bank Agreement.
- “Technical amendments” has the meaning given it in Section 14.6 of the Partner Food Bank Agreement.
- “TEFAP” means The Emergency Food Assistance Program.
- “Template” means, as appropriate, templates of the Affiliate Food Bank Agreement, Partner State Association Agreement, and Regional Cooperative Agreement developed concurrently with the Partner Food Bank Agreement.
- “Temporary Disaster Feeding Partner” means a temporary Partner Food Bank Program added under a declared state of emergency and/or added under a local, public emergency to respond to a disaster occurring within and/or adjacent to a Partner Food Bank’s Service Area, as contemplated by Section G.1.1 of **Appendix E** of the Partner Food Bank Agreement.
- “Term” has the meaning given to it in each of the Operational Agreements.
- “Treasurer” has the meaning given it in Section 3.6 of **Appendix F** of the Partner Food Bank Agreement.
- “USDA” means the United States Department of Agriculture.
- “VAP” means value-added processing, as provided in Section K.1.4 of Appendix **E** of the Partner Food Bank Agreement.
- “Voting Process” has the meaning given it in Section 14.1 of the Partner Food Bank Agreement.

1.3 Amendment

Amendment of this Glossary is addressed in Section 14.10 of the Partner Food Bank Agreement.

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