

Partnership Agreement

Effective January 1, 2025 – December 31, 2025

This document is an agreement made between South Michigan Food Bank, and

replaces all previously signed agreements.

Terms of this Agreement, 2025:

The Agency agrees to all the following terms and conditions of this Agreement. If any of these terms or conditions are violated, South Michigan Food Bank (SMFB) has the right, without further investigation, to stop distributing product to the Agency and/or follow processes outlined in the Corrective Action, Grievance, and Termination Policies document until the term(s) or condition(s) can be met:

Requirements: The Agency agrees to abide by the policies, procedures, and record-keeping requirements of SMFB.

- A. **IRS Eligibility Requirements:** The Agency must maintain eligibility by either remaining in good standing with the Internal Revenue Service (IRS) as a designated 501c3 public charity or meeting the church qualifier requirement. These qualifiers are reviewed annually and must remain current. The Agency also must meet the IRS eligibility requirements for receipt, storage, transfer, and use of donated products under section 170e3.

<https://www.naeir.org/wp-content/uploads/TAX-CODE-170E3.pdf>

- B. **Purpose of Incorporation and Service:** The Agency agrees that it is incorporated to serve the ill, needy, and/or infants (minor children 0 – 18 years old). The Agency also agrees that it will not incorporate for a purpose unrelated to serving the ill, the needy and/or infants (such as publication of a non-profit periodical providing information to members).
- C. **Distribution without Charge:** The Agency agrees that it will distribute the donated products (food and non-food items) obtained from SMFB or from the Store Retail Donor Program free of charge (monetary, volunteer hours, services, or otherwise).

D. Recipients of Distributed Products: The Agency agrees that it will only use and distribute donated products to recipients who qualify as ill, needy, and/or infants (minor children 0-18 years old), as defined in IRS code 170 (E)(3). The Agency also agrees that it will not distribute donated products to people who do not qualify to receive the products as defined in IRS Code section 170(E)(3).

E. Use of Donated Products: The Agency agrees that it will not:

- a. Use any non-food donated products in its operations or upkeep
- b. Use any donated products for business meetings, including, without limitation, committee meetings and other functions where business is conducted relating to the Agency
- c. Use donated products in connection with fundraising events
- d. Consume any donated products (food or non-food), including consumption of beverages by volunteers when carrying out assigned duties
- e. Use donated products to compensate or provide incentives to staff or volunteers
- f. Will not trade, sell, or barter donated products
- g. The Agency also agrees that it will comply with restrictions on the use and transfer of donated property, as described in IRS Tax Code Section 170(E)(3) and any amendments to the Code (See the Federal Register/Vol. 47, No.21/Monday, February 1982/Rules and Regulations, pp.4509-4512).

F. Area of Distribution: The Agency agrees that it will only distribute products received from SMFB in the areas discussed in the initial application and will discuss changes to the service area with SMFB's Community Impact Coordinator. The Agency also agrees that it will not distribute any products outside of the United States of America and Puerto Rico.

G. Record Keeping and Reporting: The Agency agrees:

- a. Maintain adequate books and records that accurately reflect the total amount of products received and distributed (or used), a description of the products, and the date of its receipt.
 - b. To keep such records for at least 1 year after the date of receipt.
 - c. Submit the monthly reports online at smfoodbank.org (P2) at the specified time (no later than the 5th of each month), as well as other reports requested by SMFB. If the Agency operates more than one type of program (pantry, soup kitchen, backpack, FFD, etc.), separate records for each program must be kept and reported.
 - d. Outline its procedure for determining that the final recipient of the products is ill, needy, or infants (minor children 0-18 years old).
 - e. Take appropriate administrative and technical measures to protect individual privacy, data confidentiality, and security. **Please note that Partner Agencies cannot ask for or require a client's social security number in order to receive food**
 - f. If receiving TEFAP food they must collect TEFAP participation records that will be maintained and include date of issuance, participant name, address, number in household and means of eligibility. Agencies must use the current TEFAP form provided by the SMFB and cannot make changes to the form without approval.
- H. **Availability of Records:** The Agency agrees to make its books and records, including but not limited to those which track the receipt and distribution of products obtained by SMFB and financial records, keeping books available to SMFB with or without notice.
- I. **Local, State, and Federal Regulations:** The Agency agrees that it will ensure the donated product conforms to any applicable provisions of the FDC and Cosmetic Act (as amended) and any regulations that follow. The Agency also agrees that it will receive, and handle products conforming to all local, state, and Federal regulations and will maintain current licenses as required by local, state, and Federal regulations.
- J. **Storage, Handling and Transportation of Products:** The Agency agrees that it will store, handle, and distribute products consistent with the Federal Food, Drug, and

Cosmetic Act. And any regulations that follow food safety guidelines as outlined in this Agreement.

<https://www.fda.gov/regulatory-information/laws-enforced-fda/federal-food-drug-and-cosmetic-act-fd&c-act>

When transporting products, the Agency agrees to do so in a manner that prevents contamination and adulteration, including, without limitation, the following requirements:

1. Temperature Controlled for Safety (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)
2. When transporting TCS foods, the Agency 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
3. All vehicles used for transporting product must have clean food storage areas and be maintained to prevent contamination or adulteration of the transported product

K. Food Safety: The Agency agrees that at least one staff member/volunteer, SMFB, prefers two (2) staff members/volunteers to be trained in food safety from a food safety training course approved by the SMFB. Approved trainings are ServSafe Certification, National Restaurant Association Certification, Food Handlers Card, or other approved safety training curriculums. The Agency also agrees that if it utilizes food provided by SMFB to make its meals, its key food service program staff/volunteer is required to meet local commercial food safety standards (i.e., ServSafe certification). SMFB follows all local, state, and Federal food safety guidelines. The Agency must follow all local, state, and Federal guidelines.

L. Donor Stipulations: The Agency agrees that it will adhere to any donor stipulations placed on donated products. If these stipulations exist, SMFB will provide a detailed explanation prior to releasing products.

M. "As Is" Condition: The Agency agrees that it will accept all products received from SMFB in the "as is" condition. If the Agency does receive products that are not acceptable, please contact Mike McNamara at (269)964-3663 ext. 494 or at mike@smfoodbank.org **within 72 hours of the delivery.**

N. Donor, SMFB, and Feeding America: The Agency agrees to release the original donor, SMFB, and Feeding America from any liabilities resulting from the donated product. The

original donor, SMFB, and Feeding America are held harmless from any claims or obligations regarding the Agency or the donated product. The Agency also agrees to hold harmless and indemnify the original donor, SMFB, and Feeding America from any claims or obligations arising from donated products or conditions or activities at the Agency locations. The Agency acknowledges that the original donor, SMFB, and Feeding America offer no express warranties in relation to the donated product.

O. Liability Release Form: The Agency agrees to execute and submit to SMFB the Liability Release form, also known as the "sign-in sheet" or "TEFAP Form", and any other liability release forms that SMFB may require at any time.

a) Per 42 U.S. Code § 1791 – Bill Emerson Good Samaritan Donation Act, the Liability Release Form (sign-in sheet/TEFAP sheet) protects from liability:

1. The original donor, the Agency, SMFB, and Feeding America. These entities are released by the client from any liabilities resulting from donated products.
2. The original donor, the Agency, SMFB, Food Bank Council of Michigan, and Feeding America are held harmless from any claims or obligations regarding the Agency or the donated product.
3. The original donor, the Agency, SMFB, Food Bank Council of Michigan, and Feeding America offer no express warranties in relation to the product.

P. Shared Maintenance, Transportation, and Value-Added Processing Fees: The Agency agrees to pay applicable **Shared Maintenance and/or handling fees** (Value-Added processing, delivery charges, and transportation fees) for products received from SMFB.

Q. Discrimination: The Agency agrees that it will not engage in discrimination in the provision of services 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 current USDA Nondiscrimination Statement.

USDA Nondiscrimination Statement

"In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity." Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible state or local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. To file a program discrimination complaint, a Complainant should complete Form AD-3027, USDA Program Discrimination Complaint Form, which can be obtained online at: [USDA Program Discrimination Complaint Form](#), from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by: mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; or fax: (833) 256-1665 or (202) 690-7442; or email: program.intake@usda.gov This institution is an equal opportunity provider.

- R. **On-site Inspections:** The Agency agrees to allow representatives of SMFB, donors, and government agencies to monitor and audit all facilities and vehicles where products from SMFB are received, stored, and distributed, with or without notice. Each Agency will be monitored annually. **SMFB will notify the Agency via email at least two (2) weeks prior to the monitoring visit. The Agency must have someone available on the day of the inspection to meet with SMFB's Community Impact Coordinator to complete the visit. If the Agency does not comply, it will be suspended until the inspection is completed.**
- S. **Authorized Agent:** The Agency agrees to have only authorized agent(s) pick up or receive products from SMFB. The Agency also agrees to make a list of authorized agent(s) known to SMFB and contact SMFB when a change is made to the list.

T. Communication: The Agency **MUST** provide SMFB with a working email address and two (2) phone numbers with message-leaving capabilities. **The emails MUST be checked weekly, as this is how SMFB will send recalls, invoices, statements, and other important information.** One (1) of the phone numbers must be a contact person who is physically on-site so SMFB is able to contact the Agency in case of delivery delays or issues that may arise and need immediate attention.

U. Access to One Feeding America Partner Food Bank: The Agency agrees that it will only receive food from SMFB and no other Feeding America Partner Food Bank.

V. Liability Release Form: The Agency agrees to execute and submit to SMFB the Liability Release form, also known as the "sign-in sheet" or "TEFAP Form", and any other liability release forms that SMFB may require at any time.

b) Per 42 U.S. Code § 1791 – Bill Emerson Good Samaritan Donation Act, the Liability Release Form (sign-in sheet/TEFAP sheet) protects from liability:

4. The original donor, the Agency, SMFB, and Feeding America. These entities are released by the client from any liabilities resulting from donated products.

5. The original donor, the Agency, SMFB, Food Bank Council of Michigan, and Feeding America are held harmless from any claims or obligations regarding the Agency or the donated product.

6. The original donor, the Agency, SMFB, Food Bank Council of Michigan, and Feeding America offer no express warranties in relation to the product.

W. Operating Schedule: The Agency must operate at regularly scheduled times, and these service times **MUST** be posted within easy sight of clients and potential clients. The Agency **MUST** also communicate these service times and any changes, including weather closures, to SMFB. The Agency must also have in place a system for notifying clients and potential clients of unexpected closures (weather, etc.).

X. **Active /Inactive Agency Designation:** The Agency agrees that it will obtain products from SMFB **four (4) times a year (at the minimum, you must order quarterly) to be deemed an active agency.** Exceptions to this requirement are those agencies that are designated as a "Holiday Pantry" or a "Backpack Program". **Holiday agencies must order at least once per calendar year, and Backpack Programs must order at least twice per calendar year.** If the Agency has not met the requirements, the Agency will be contacted to determine what issues the Agency may have and how SMFB may be able to help the Agency. If the issues cannot be solved, the Agency will be closed. After the Agency has been closed, the Agency agrees that an updated Partnership Agreement **must** be signed, and a monitoring visit **will be** completed prior to being reinstated as an active Agency and allowed to obtain products from SMFB again. Termination of Partnership Agreement: The Agency or SMFB can terminate this Agreement, with or without cause, at any time.

Y. **Multiple Locations and Sub-Distribution:** The Agency agrees that it will only receive and store products from SMFB at multiple locations if each location:

1. Meets the requirements of this Agreement
2. Has been monitored
3. Approved by SMFB prior to receiving and distributing product

The Agency agrees to not sub-distribute, redistribute/share donated products to any organization, Agency, or entity other than a qualifying client without a signed agreement or addendum to this Agreement.

Z. **Order Fulfilment and Pick Up:** The Agency agrees that it is fully responsible for ensuring adequate and safe transportation and volunteer support for food order pick up, whether at the SMFB warehouse or tailgate location. If adequate transportation and volunteer support is not provided by the Agency, SMFB reserves the right to deny order pick-up. In the event SMFB denies a pick-up due to inadequate transportation or volunteer support, the product will go back into inventory, and the Agency will have to place another order to obtain the missing product. The Agency may also be subject to associated fees outlined in this **Agreement's Billing and Payment Terms.**

AA. Marketing Plan and Disaster Response: The Agency agrees to have a marketing plan and disaster plan in writing (and make them available to the SMFB when requested).

Suspension, Termination, and Grievance Policy

Suspension and Termination Policy: SMFB reserves the right to place an Agency on suspension for a period of **up to** three (3) months for non-compliance. If the Agency becomes compliant and adheres to outlined policies during its suspension period, the suspension will be lifted with no further action taken. If the Agency cannot or refuses to become compliant within the suspension period, SMFB will terminate the partnership agreement with the Agency. The Agency must wait at least twelve (12) months (one calendar year) after the termination date to apply again to become an Agency.

Grievance Policy: Agencies may voice concerns or appeal decisions made by SMFB staff. Place your concerns in writing and send them to: Chief Operating Officer, South Michigan Food Bank, 5451 Wayne Road, Battle Creek, MI 49037. You may also email to brittney@smfoodbank.org. All appeals will be reviewed by the Chief Operating Officer, Chief Executive Officer, and/or Board Directors. A written response to the appeal will be issued within thirty (30) days.

Billing and Payment Terms

Invoices: The Agency will receive an invoice via email to the "order email" address on the account detailing charges within ten (10) days of the order being picked up or delivered. Copies of the current and past invoices are available in P2 Web Window under "My Docs", invoice tab.

Statements: Monthly statements will be emailed within seven (7) days of the following month for the Agency with balances due and activity of the previous month. Copies of current and past statements can also be found in P2 Web Window under "My Documents".

Payment Terms: *Payment is due within 30 days of the last invoice date.*

Payment Details: Please make checks to South Michigan Food Bank and mail them to:

South Michigan Food Bank

5451 Wayne Road

Battle Creek, MI 49037

All checks must include the **Agency Name, Agency Code, and Invoice Number.**

Past Due: An invoice is considered past due if payment has not been received within 30 days after the invoice date. If **no** payment has been received and the Agency reaches 60 days past the invoice date, the following steps will be taken:

1. The Agency will be contacted via email requesting payment. If payment is made, no further action will be taken.
2. If no payment has been received within 90 days of the invoice date, a formal written past-due request for payment will be sent via email to include all overdue invoice numbers and amounts.
3. If no payment has been received within 120 days of the invoice, a final notice will be issued, along with a two-week notice to suspend and/or the last delivery date of FFD. The SMFB's Community Impact team will reach out for immediate follow-up actions, including, but not limited to, a personal phone call, email, or site visit to discuss payment.

If the Agency is suspended for more than three (3) months, the Agency will become inactive. The Agency will not be able to open food distribution sites with SMFB until the overdue invoices are paid in full.

SMFB reserves the right to levy the following fees:

1. Missed Delivery Fee: \$75 per incident.

- 2. Return Check fee: \$25 per incident.

- 3. Restocking fees (for missed, incomplete pick up, missed tailgate): 10% of the total order.

*South Michigan Food Bank has the right to update or modify this Agreement as needed. In case of updates, an addendum will be added and will be signed by SMFB and the Agency.

2025 Partnership Agreement Confirmation

By initialing and signing below as indicated, your Agency shows full understanding and Agreement to all policies and procedures as outlined in this 2025 Partnership Agreement. Each policy must be initialed to show the Agency receipt, understanding, and Agreement. No alterations or changes may be made to any part of this Agreement. Please complete and return this page to SMFB's Community Impact team no later than January 31, 2025. For questions, please contact Heather Pearce at Heather@smfoodbank.org or 269-964-3663 ext.491. Thank you for being a Partner Agency in the fight against hunger. We look forward to continuing our strong partnership.

Agency Code _____ Agency Name _____

Please initial below to indicate receipt and understanding of each Agreement:

- _____ Terms of Partnership Agreement, 202 (pages 1-5)
- _____ Suspension and Termination Policy (pages 5 and 6)
- _____ Billing and Payment Terms (pages 6 and 7)
- _____ Food Safety Guidelines (pages 2 and 3)
- _____ Record Keeping and Reporting (page 2 and page 4)
- _____ Marketing and Advertising Policy (page 5)

The Partner Agency's authorized representative's signature below confirms that the Partner Agency is accepting and agrees to abide by all terms of this Agreement.

Partner Agency's Signature

Date

Print Name of authorized representative who signed this Agreement.

Food Bank Representative Signature:



Peter Vogel



Brittney Fletcher

Chief Executive Officer

269-964-3663 ext.437

Peter@smfoodbank.org

Chief Operating Officer

269-964-3663 ext.426

Brittney@smfoodbank.org