

Marketing Agreement

SLS SAMPLE DOCUMENT 07/10/17

Growing season: 2013 **Effective date of agreement:** XX-XX-XX

Farmer name: John Doe

Farmer mailing address: 123 Main Street

Farmer phone/e-mail: XXX-XXX-XXX
john@gmail.com

Farm location: ___ acres in [_____] County, CA (Parcel No. XXX)

Crop plan:

Crop	Grower Acres	Acres	Days to Maturity	Plant Date	Harvest Date

Organic certifier: CCOF

Delivery point: Client facility – [_____] =

Client commission: ___%

Payment terms: 30 days after delivery to Client

This document, which consists of this form (the "Sales Plan") and the attached Terms and Conditions (together, the "Agreement"), creates a legal contract between Farmer and Client. It describes the terms under which Farmer will grow, and Client will market and sell, Farmer's crop. By signing below, Farmer confirms that Farmer understands and agrees to the terms of this Agreement, including those relating to payment and waiver of statutory provisions.

Client

Farmer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Farmer confirms that it has been provided with the relevant provisions of the California Food and Agricultural Code relating to the Agreement and reconfirms all of the waivers made by Farmer in the Agreement relating to these statutory provisions.

Note: This document does not reflect or constitute legal advice. This is a sample made available by the Organizations and Transactions Clinic at Stanford Law School on the basis set out at nonprofitdocuments.law.stanford.edu. Your use of this document does not create an attorney-client relationship with the Clinic or any of its lawyers or students.

Terms and Conditions

Background

[] (“Client”) is a non-profit organization based in [], California. Its mission is to advance []. Client provides educational and business opportunities for farm workers and aspiring farmers []. Client established its Client [] program as a licensed produce distributor to support the sales and training needs of beginning farmers as an essential component to their development and success as entrepreneurs. Client [] provides farmer-vendors with technical assistance on crop planning, field production, post-harvest handling/packing, as well as the marketing and distribution to a variety of customers. Client [] also offers marketing education for farmers on packing and sales for wholesale and retail distribution, including food safety and quality control training.

Farmer is engaged in the business of growing or arranging for the growing, harvesting, and marketing of farm commodities and seeks assistance with the sale of such farm commodities and the services of Client [].

Definitions

For purposes of this Agreement:

- page 1 of this Agreement is called the “Sales Plan”
- “Crop” means the crops identified on the Sales Plan
- “Farm” refers to the farm property referred to on the Sales Plan
- “Food and Ag Code” means the California Food and Agricultural Code
- “organic standards” means the National Organic Program including its regulations
- “Organic Certifier” means the organic certifier identified on the Sales Plan

1. Basic Transaction

As set out in more detail in this Agreement:

1.1 Production

The Sales Plan sets out the crops Farmer will grow on the Farm, and the related acreages, plant dates, and harvest dates. Farmer will plant, grow, and harvest such Crop in the acreage and on the timeframe so stated.

1.2 Packing

Farmer will pack the Crop in accordance with Client's labeling requirements and other specifications.

1.3 Transport

Farmer will transport the Crop to Client at the delivery point specified on the Sales Plan, on the timeframe so stated.

1.4 Marketing, Sale, and Payment to Farmer

Client will market, price, and sell accepted Crop, and, on the terms set out in the Sales Plan, will pay Farmer an amount equal to the price agreed with the buyer, less the commission set out on the Sales Plan and less other amounts as provided in this Agreement. Client will market the Crop under its own label, or under another label as Client may determine in its discretion. Client or its buyer, not Farmer, will arrange for transport of the Crop to buyer.

1.5 Rejection

As provided in Section 3.9, Client may reject Crop if Client determines such Crop does not conform to the warranties set out in this Agreement or if Farmer otherwise is not in compliance with this Agreement. If Client rejects Crop, Farmer may pack it under a non-Client label and market the Crop outside of this Agreement.

1.6 Warranty

Farmer warrants that, at the time Crop is delivered to Client, it will: (a) be suitable for human consumption; (b) not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act; (c) grown, harvested and packed in accordance with this Agreement, Client's specifications, organic standards, and applicable laws; (d) merchantable and fit for the purpose intended; and (e) delivered free and clear of all consensual security interests, liens or adverse claims.

1.7 Title and Risk of Loss

Farmer will have full legal and beneficial title to a Crop until it is delivered to and accepted by Client's customer. Farmer will bear the full risk of loss of Crop during the growing, harvesting, and delivery of the Crop to Client.

2. Crop Production and Farm Operations

2.1 Farming Operations

Farmer will plant, cultivate, and harvest the Crop in a good and farmer like manner and in accordance with good farming practices. Farmer will ensure that all Crop is produced in accordance with organic standards, including, without limitation, those relating to land, soil fertility and crop nutrient management, seeds, crop rotation, weed and pest management, handling, and non-contamination measures. If any Crop is destroyed or damaged for any reason, Farmer will make commercially reasonable efforts, including replanting, to replace such damaged Crop.

2.2 Farmer Responsibility for Own Decisions

Farmer will have sole responsibility for the planning, management, and carrying out of its farming operations whether or not it obtains educational or technical support from Client.

2.3 Land, Labor, Inputs, and Expenses

Farmer will have sole responsibility for procuring and paying for all of inputs, labor and third party services Farmer uses in conducting its farming operations, including, without limitation, land, water, utilities, labor, seed, nursery plants, fertilizers, equipment, technical services, and packaging materials.

2.4 Food Safety

Farmer will comply with food safety requirements and protocols under applicable law and as set out in Client's food safety manual, including, without limitation, those relating to traceability of product.

2.5 Packaging

Farmer will pack the Crop, and transport and deliver it to Client, at Farmer's sole expense and in accordance with organic standards and Client's labeling and other specifications. Farmer will be responsible for any contamination that occurs during transport to Client. Farmer will procure Client-branded labels, ties, and other packaging materials from sources approved by Client; Client will invoice Farmer for all such items other than labels for clamshells, and Farmer will pay the amount stated in the invoice no later than ten days after receipt of invoice.

2.6 Labor and Contractors

Farmer will have sole responsibility for the selection, hiring, firing, supervision, assignment, direction, methods, manner of performance, setting of wages, hours, working conditions, and grievance management for Farmer's employees. Client will not have any right to direct or control those persons in any respect whatsoever. Similarly, Farmer will have sole responsibility for the retention, oversight, and payment of any independent, contractors, agents, or advisors Farmer engages in carrying out its obligations under this Agreement.

2.7 Compliance with Law

Farmer in conducting its farming operations will comply with all applicable federal, state, and local laws and regulations, including, without limitation, those relating to labor and employment such as the Fair Labor Standards Act and the California Labor Code; licensing and permitting; food safety; and the environment and worker safety, such as the Federal Insecticide, Fungicide and Rodenticide Act, as amended, the Federal Food, Drug and Cosmetic Act, as amended, the California Worker Safety Laws for Agricultural Workers Handling Pesticides, as amended, and any and all other federal, state, and local laws and regulations relating to herbicides, pesticides, and other chemical products.

2.8 Permits and Licenses

Farmer will maintain all permits, licenses, and other regulatory permissions required to conduct its farming operations.

2.9 Taxes, Contributions, and Withholding

Farmer will be responsible for all tax returns and payments required by any federal, state, or local tax authority in connection with its farming operations. Farmer will make all required contributions, including, without limitation, disability, unemployment insurance, and workers' compensation. Client will not withhold income, Social Security, or Medicare taxes, make unemployment or disability insurance contributions, or obtain workers' compensation or other insurance on behalf of Farmer or its employees or contractors.

3. Marketing, Sale, and Payment

3.1 Marketing

Client will market Crop delivered to Client. Client may in its sole discretion determine marketing strategy, product offering, buyer selection, terms for sales to buyers, pricing, and all other matters relating to marketing and sale. Client in its sole discretion may determine whether to sell a Crop on a fresh or freezer grade, but will seek to consult with Farmer before making a decision to sell on a freezer-grade basis. Client may reject Crop and not market it as described in Section 1.5.

3.2 Pricing

Client will use commercially reasonable efforts to obtain the best market price for the Crop. Client may in its sole discretion make any market adjustments, grant any allowances, or make price adjustments that it believes appropriate in order to make and complete sales.

3.3 No Price Guarantee

Farmer acknowledges that nothing in this Agreement constitutes a guarantee of any specific price for a Crop or a guarantee that Client will be able to obtain for the Crop the average price obtainable for similar commodities on the sale date. Farmer understands that Farmer's return will be based upon market conditions, and that, after deduction of Client's commission and other deductible expenses, Farmer may not receive any return if market conditions so dictate.

3.4 Delivery to Buyer

Client or the buyer will arrange for transport of the Crop from Client to the buyer. Client in its sole discretion may determine methods and terms of transport.

3.5 Invoicing and Payment by Buyer

Client will invoice buyers and receive all payment for Crop sold. Client may take, in its own name, all steps that in its judgment are necessary to enforce collection, including referral to collection agencies and filing and prosecution of court and administrative proceedings.

3.6 Net Price and Payment

Client will pay Farmer the net price for each lot of Crop no later than 30 days after delivery of Crop to Client. Net price means the price buyer agrees to pay Client at the time of delivery of Crop to buyer, less:

- Client's commission as specified on the Sales Plan
- charges for cooling if Crop is stored or picked up other than at Client's facility identified on the Sales Plan
- charges for ice or icing if provided by a third party
- reductions for Crop rejected by a buyer on quality grounds
- allowances for required or discretionary inspections as determined by Client in its sole discretion
- reimbursement for Client-provided packaging for Crop if not timely paid by Farmer
- reimbursement for any other amounts that may be owed by Farmer to Client

Client may retain any rebates, discounts, credits or other incentives that may be offered by any vendor engaged by Client in connection with marketing and sales activities.

3.7 Sales Report and Payment Mechanics

Client will provide Farmer, with each payment of the net price, a written report showing the computation of such net price. Unless otherwise agreed with Farmer, Client will pay the net price by issuing a check to Farmer. All payments made to Farmer by Client will be final. If any third party makes a claim against Client on a payment due to Farmer, Client may hold such payment until a final determination as to the claim.

3.8 Government Regulation

Client is authorized to comply with any governmental regulation or order affecting the Crop or packing standards and to act with full authority concerning any matter under any federal or state law or order pertaining to any Crop.

3.9 Rejected Product

The failure of Client to specify defects in rejected Crop will not prevent Client from relying on such defects to establish a breach of this Agreement, notwithstanding the fact that Farmer might have cured such defects if Client had promptly notified Farmer of its determination that the Crop was substandard or improperly delivered. Client may charge Farmer all costs, freight, and other expenses incurred in connection with Client's handling of rejected Crop. If Client accepts Crop that is rejected by the end customer, Client will have the right, in its sole discretion, to market the Crop to any other customer. If as the result of a rejection of any Crop for reasons related to the quality of the Crop, Client has incurred costs of a federal inspection and freight to move the Crop, and has been unable to recover costs that it has incurred with respect to such sale including, without limitation, freight, supplies, and recorder fees, Client may deduct such costs and fees from future obligations it may have to Farmer. Farmer acknowledges that certain customers may require inspections made by in-house inspectors employed by such customer, and such customer may reject Crop based upon such inspection without resort to a federal inspection. Farmer acknowledges and agrees that Client and Farmer will be bound to the results of such in-house inspection when required by the customer.

3.10 Product Recall

If there is a quality or other defect in any Crop, Client may determine the corrective action required, including recall of such Crop. Client will have no obligation to pay Farmer for any

Crop that is subject to recall, by Client, Farmer, or governmental authority, and Farmer will reimburse Client for any expenses related to such recall.

4. Cooperation

4.1 Cooperation and Shared Interests

Client and Farmer acknowledge the importance of planning, coordination, and cooperation in their activities under this Agreement, and that it is in their mutual interest that the Crop be of the highest possible quality, of consistent quality and production, and timely harvested. Client and Farmer acknowledge that Client makes significant long-term decisions based on its growing, harvesting, packing and marketing arrangements with farmers, may limit its arrangements with other farmers or not seek other crop sources based on its entry into this Agreement, and makes representations to buyers about manner of production of the Crop. Similarly, Client and Farmer acknowledge that Farmer's business requires long term planning and investments and that Farmer may adjust farming, harvesting and packing decisions, including time, amount and frequency of plantings as well as type of planted crop, to fulfill its obligations under this Agreement.

4.2 Consultation

Farmer and Client will consult with each other regarding Crop planting dates, seed types, procedures for cultivation, irrigation, fertilization, harvest dates, and other major policy matters concerning the growing of the Crop, it being understood that Farmer will have sole responsibility for making and carrying out all growing decisions. Farmer will advise Client of factors that may affect quality, marketability, harvest dates, or safety of a Crop, including any factors that may affect compliance with organic standards, and will regularly advise Client of projected yields, quality levels, and harvest dates.

4.3 Farm Visits

Client may visit and enter the Farm at any reasonable time to inspect Farmer's operations, for the purposes of evaluating Crop quality for marketing and for taking any other action Client believes is appropriate to confirm Farmer's compliance with this Agreement. Farmer consents to Farm visits and inspections by buyers and by food safety or other advisors retained by Client. Client's or such third parties' presence on or near the Farm will not limit or affect in any way Farmer's obligations under this Agreement. This Section 4.3 does not and will not impose any duty on Client to inspect the Farm, report to Farmer the results of any inspection, or assume any liability of any kind arising from inspecting or not inspecting the Farm.

4.4 Performance of Farmer Obligations by Client

If Farmer fails to take actions required or necessary under this Agreement, including, without limitation, engaging in growing activities or paying suppliers, Client may, but is not required, to enter upon the Farm and take such action, all on behalf of and for the account of Farmer. Farmer will reimburse Client for the costs of all such actions. Client may collect reimbursement by deducting the amount from any amounts owed by Client to Farmer under this Agreement or by separately invoicing Farmer. Farmer will pay the amount stated in the invoice no later than 10 days after receipt.

4.5 Notice of Adverse Developments

Farmer will notify Client promptly of factors that may affect Crop quality, Farmer's ability to fulfill the Sales Plan, or Farmer's ability to comply with Client growing requirements. This includes, without limitation: (i) any suspension or revocation of organic certification for any Crop; (ii) any investigation or notice received by Farmer of noncompliance by Farmer with organic standards; (iii) the occurrence of drift, flooding, or other events that may affect compliance with food safety requirements or organic standards; (iv) loss of food safety certification; (v) loss of Farmer's lease or other right to occupy the Farm; (vi) loss of any necessary license or permit; (vii) any cancellation, loss, or any material changes in any insurance Farmer is required to maintain under this Agreement; or (viii) dissolution of, or filing

of bankruptcy by or against, Farmer. Each delivery of Crop to Client by Farmer will be considered a representation by Farmer that Farmer's organic certification is in full force and effect and not suspended or revoked.

4.6 Information and Recordkeeping by Farmer

Farmer will provide Client with such documents and information as Client may reasonably request, including, without limitation, organic certification documents, transportation records, and information relating to growing practices and food safety. Farmer will maintain records relating to its operations such that Client can evaluate Farmer's compliance with this Agreement, and will make those records, including, without limitation, those relating to organic certification and practices, investigations of non-compliance with organic standards, and food safety and employment practices, available for review by Client on reasonable notice during the term of this Agreement. Each of Client and Farmer will reasonably cooperate with the other in providing information relating to its activities under this Agreement in connection with any financial or tax audit, or similar matter, in which the other is engaged.

4.7 Information and Recordkeeping by Client

Client will maintain records relating to its operations, and make them available to Farmer, as required by law or as otherwise reasonably requested by Farmer. Client will reasonably cooperate with Farmer in providing information relating to its activities under this Agreement in connection with any financial or tax audit, or similar matter, in which the other is engaged.

5. Relationship

5.1 Exclusivity

Nothing in this Agreement limits Farmer's ability to sell agricultural products other than Crop directly through farmers' markets, community-supported agriculture systems, farm-to-school programs or otherwise, through other marketers or distributors, or directly to wholesale customers. Farmer will advise Client before it engages in any such production and sales, will ensure that such activities will not impair its ability to perform its obligations under this Agreement, and will not enter into any other agreement relating to sale or transfer of Crop or otherwise inconsistent with this Agreement.

5.2 Client Name and Brand

Client may market Crop under Client brands and logos. Farmer acknowledges and agrees that neither such use nor any provision of this Agreement gives Farmer any right, property, license, permission or interest of any kind or nature in or to the use of any Client brand, logo, trademark, trade name, service name, trade dress, or other intellectual property (collectively, "Client Marks"). Farmer will not use any Client-branded labels, ties or other packaging for any purpose other than labeling packaging for Crop sold through Client under this Agreement. For clarity, Farmer may not use Client packaging materials, or use the Client name, brand, logo or other Client Mark, or otherwise identify itself as a grower for Client, in Farmer's marketing activities, direct or wholesale sales, or otherwise.

5.3 Publicity

Client in its discretion may identify Farmer as a grower and participant in Client's educational and business development programs, including using Farmer's trade name and logo, in Client's internal and external communications including its website, grant applications, fundraising materials, and other outreach materials. Client is under no obligation to promote Farmer and retains sole discretion in determining if and how to publicize its participants.

5.4 Media Release

Client may film, tape, photograph, interview, and otherwise document Farmer's activities at the Farm and at Client facilities. All video, photographic, audio, written, and other materials produced by Client in connection with Farmer's activities and all copyrights in these materials will be the sole property of Client and may be made available by Client to third parties, on

Client's website, in Client publications, or through any other media, in Client's sole discretion. Farmer is not entitled to inspect or approve versions of any media prior to its use by Client, nor is Farmer entitled to receive any payment for any such use by Client. Farmer grants to Client all copyrights and other rights it may have in any media created and distributed by Client under this Section 5.4, including, without limitation, any right to copy, edit, change, or transfer the media.

5.5 Program Assessment

Client collects, analyzes, and disseminates data about its programs. Such work is intended to help Client evaluate the effectiveness of its programs, comply with its external reporting obligations, and carry out its internal and external communication efforts. Farmer consents to Client using Farmer's information for data analysis and aggregation purposes and incorporating such information in its external reporting and communications activities. Subject to Section 5.3 and to applicable law, Client will disclose information about Farmer on a no-name basis unless Client has Farmer's prior approval to disclose Farmer's name in connection with such assessment reporting.

5.6 Independent Businesses; Merchants

Farmer is and will be an independent enterprise. Farmer and Client are not running a farm or business together. Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Farmer and Client for any purpose. Neither Farmer nor its employees or contractors will be entitled to or eligible for any benefits that Client makes available to its employees, including, without limitation, coverage under any Client medical, dental, liability, automobile, or other insurance policies. Client and Farmer acknowledge that both are "merchants" for purposes of the California Commercial Code.

5.7 Contracts with Other Parties

Client and Farmer may each be required to enter into contracts with third parties, such as landlords, lenders, suppliers, and customers, in order to carry out its respective obligations under this Agreement. Such contracts will be the sole responsibility of the entity entering into the contract; neither Client nor Farmer will assume any liability for or guarantee the performance of the other in conjunction with any of these contracts.

6. Acknowledgements and Statutory Waivers

6.1 No Sales or Profits Guarantee

Farmer acknowledges that Client has not made and is not making any representations, warranties, promises, or guarantees of any kind about market conditions, buyers, or Farmer's success, including, without limitation, representations about Farmer's sales or profits or public awareness of Farmer. Farmer has made its own independent business evaluation in deciding to enter into this Agreement and to engage Client to market the Crop. Farmer acknowledges and confirms that Client has no liability to Farmer for any failure by Farmer to meet its own quantity and quality expectations.

6.2 No Future Obligations

Farmer acknowledges that Client, as a result of entry into or performance by either party under this Agreement, has and will have no obligation to provide loans or other financial or technical support to Farmer, or to extend the relationship with Farmer in any respect, or to engage in any other transaction and relationship with Farmer. Client and Farmer each acknowledge that this Agreement has a fixed term and does not renew, and that a marketing arrangement after its termination requires Client and Farmer to enter into a new agreement.

6.3 Waivers of California Food and Agriculture Code Provisions

Farmer waives its rights with respect to the following: (a) Section 56272 of the Food and Ag Code and the right to receive a written report of the quantity of Crop sold and the selling price before the close of business on the day after the sale; (b) Section 56273 of the Food and Ag Code and the

right to receive remittance of sales proceeds within ten (10) days after receipt of the sales proceeds by Client, Farmer agreeing instead that a payment of the net price will be made as provided in this Agreement; (c) Section 56273.1 of the Food and Ag Code, instead agreeing that the records and reports required under this Agreement will be sufficient supporting documentation for the information required by such Section 56273.1(a); (d) Section 56280 of the Food and Ag Code and the right to require inspections prior to downward price adjustments, instead consenting expressly to downward price adjustments as determined necessary by Client; and (e) Section 56280 of the Food and Ag Code and the right to notice of downward price adjustments within forty-eight (48) hours after such adjustment, instead agreeing not to request that a lot number be affixed on each individual farm produce container as provided in subdivision H of Section 56271 of Food and Ag Code. By execution of this Agreement, Farmer acknowledges receipt of copies of Sections 56271, 56272, 56273, 56273.1, 56280, 56281, 56282 and 56351 of the Food and Ag Code; copies of those statutes are attached as an exhibit to this Agreement.

7. Indemnification, Insurance, and Limitation of Liability

7.1 Indemnification by each of Client and Farmer

Each of Client and Farmer will indemnify, defend and hold the other harmless from and against any and all allegations, investigations, charges, claims, demands, complaints, actions, proceedings, causes of action, fees, assessments, fines, remedies, orders, obligations, damages, debts, liabilities, expenses, or losses, whether civil, criminal, or administrative, including, without limitation, court costs and attorneys' fees, that may be suffered by the other, arising from or concerning the employment of individuals performing the respective party's functions under this Agreement, including, without limitation, matters relating to workers' compensation, state and federal taxes, labor, health, welfare, occupational safety, benefits, and criminal laws.

7.2 Indemnification by Farmer

Farmer will indemnify, defend, and hold Client, its agents, employees, directors, officers and/or affiliates (collectively, "Client Parties") harmless from and against any and all claims, demands, actions, causes of action, obligations, damages, debts, liabilities, expenses and losses, including, without limitation, court costs and attorneys' fees, that may be suffered by such Client Party, arising directly or indirectly out of: (a) any breach by Farmer of its obligations under this Agreement, including, without limitation, any warranty made by Farmer and any obligations relating to Farm operations or compliance with law; (b) sale, use, or consumption of the Crop, including, without limitation, any claim arising from adulterated or contaminated Crop, whether the claim involves product liability, consumer protection, organic certification and representations, health and safety, negligence, or other tort, employment, tax, or any other matter; (c) any claims by employees, family members, customers, subcontractors, vendors, suppliers, creditors, tax authorities or other persons in a relationship with Farmer; (d) any claims by third parties whom Farmer brings on to the Farm; (e) any claims under any environmental or worker safety law arising from Farmer's farming activities; (f) damage, destruction or the like to the Crop as well as from any consequence thereof sustained while risk of loss remains upon Farmer; and (g) any other act or omission by Farmer in connection with this Agreement, except in every case to the extent the liability is caused by the gross negligence or willful misconduct of Client.

7.3 Limitation of Liability

Client will not be liable to Farmer for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement including, without limitation, claims for loss of revenue, loss of profits or loss of use, even if Client has been apprised of the likelihood of such damages. Client's total liability under this Agreement will not exceed that which Client has paid to Farmer in respect of the net price under this Agreement up to the date of adjudication, except that no such limitation will apply in respect of liabilities involving gross negligence, willful misconduct, or fraud by Client.

7.4 Liability Insurance

Farmer will maintain at all times comprehensive general liability insurance coverage, including product liability coverage, contractual liability and vender's coverage. Such insurance will be at a minimum of [_____] (\$[_____] combined single limit coverage for bodily injury and property damage. In addition, Client, at its sole discretion, may require Farmer to maintain insurance covering crop loss. Farmer will, upon Client's request, deliver to Client a certificate evidencing such insurance. Such certificate will include a provision for notification at least thirty (30) days in advance of any material change or cancellation in the coverage provided.

7.5 Worker's Compensation Insurance

Farmer will carry all necessary liability insurance and workers' compensation insurance for all persons performing services for Farmer on the Farm and in connection with Farmer's operations, except for employees of Client who may from time to time be on the Farm.

8. Termination and Dispute Resolution

8.1 Expiration

This Agreement will terminate one year after the effective date stated on the Sales Plan, unless terminated under any of the other provisions of this Section 8.

8.2 Mutual Agreement

This Agreement may be terminated by a writing signed by both Client and Farmer that states their intent to terminate this Agreement and the date upon which such termination will take effect.

8.3 Termination for Breach

If either party breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within fifteen (15) days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon delivery of such notice to the breaching party. The non-breaching party will in its reasonable discretion determine whether the breach has been cured.

8.4 Organic Certification

Client may terminate this Agreement if Farmer's organic certification for any Crop is suspended or revoked. Such a termination will be effective five days after delivery by Client to Farmer of a notice to that effect. Client may terminate this Agreement if Farmer receives notice of a proposed suspension or revocation of organic certificate for any Crop and Farmer does not provide, on Client's written request within ten days of such request, adequate assurance in writing to Client that Farmer will be able to fulfill its obligations in respect of such Crop under this Agreement.

8.5 Immediate Termination by Client

Client may immediately terminate this Agreement, subject to notice to Farmer, if Farmer (a) dissolves, liquidates, ceases to engage in its operations, commences any proceeding under any bankruptcy or insolvency law, (b) uses Client's name, brand, logo, or other Client Mark in violation of this Agreement; or (c) makes any false statements to Client. Such a termination will be effective upon delivery by Client to Farmer of a written notice to that effect.

8.6 Immediate Termination by Farmer

Farmer may immediately terminate this Agreement to Client if Client dissolves, liquidates, ceases to engage in its operations, or commences any proceeding under any bankruptcy or insolvency law. Such a termination will be effective upon delivery by Farmer to Client of a written notice to that effect.

8.7 Death or Serious Illness of Farmer

If Farmer is a sole proprietor, Farmer (or Farmer's estate or personal representative) may terminate this Agreement if Farmer dies, becomes disabled, or becomes unable to carry out farming activities due to serious illness. Such a termination will be effective upon delivery by Farmer or Farmer's estate or representative to Client of a written notice to that effect.

8.8 Cumulative Remedies

Each of Client's and Farmer's rights, powers, and remedies under this Agreement are cumulative and not alternative and will be in addition to all rights, powers, and remedies given to Client and Farmer at law or in equity. The exercise of one or more of these rights or remedies will not impair Client's or Farmer's right to exercise any other right or remedy.

8.9 Effect of Termination

Upon the expiration or termination of this Agreement, Farmer will within ten days of such event return to Client any unused labels, ties, or Client-branded packaging. Client will not charge Farmer for any unused ties. Client and Farmer will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination. Farmer will under no circumstance be entitled, directly or indirectly, to any form of compensation or indemnity from Client or to obtain an injunction, specific performance, or other equitable remedy as a consequence of the termination or expiration of this Agreement for any reason. Sections 2.9, 3.10, 4.6, 5.2, 5.4, 5.5, 7.1, 7.2, 7.3, and 9 will survive the expiration or termination of this MOU.

8.10 Injunctive Relief

Nothing in this Agreement limits the ability of Client to seek and obtain injunctive relief with respect to Farmer's use of Client Marks in violation of this Agreement.

9. General Provisions

9.1 Entire Agreement

This Agreement, together with the food safety manual, is the entire agreement between Farmer and Client and supersedes prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between Farmer and Client relating to the same subject matter. Client rejects any term or condition in any invoice, e-mail, plan, or other document of Farmer which conflicts with or adds to this Agreement. The inclusion of express warranties in this Agreement is not intended to and will not be considered a waiver of other warranties that may be implied or otherwise provided under law.

9.2 No Impact on other Agreements with Client

This Agreement does not amend, limit, or otherwise affect any lease or other agreement, if any, under which Farmer leases land from Client or participates in a Client educational program.

9.3 Amendment

This Agreement may be amended only as stated in a writing signed by both Farmer and Client that recites that it is an amendment to this Agreement. If there is any conflict between this Agreement and the food safety manual or any other agreement between Farmer and Client, then this Agreement will control.

9.4 Modification of Food Safety Manual

Client may modify or amend any of the food safety manual from time to time in its sole discretion. Client will use reasonable efforts to provide Farmer with copies of any modified policy but its failure to do so does not relieve Farmer from its obligation to comply with the food safety manual previously in effect until Farmer has actually received the modified manual.

9.5 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.

9.6 Assignment

Farmer may not assign its rights or delegate its duties under this Agreement. Client may freely assign its rights and delegate its duties, and may in its discretion engage subcontractors to help it carry out its obligations.

9.7 Waiver

Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

9.8 No Third Party Beneficiaries

Except as specifically provided in Section 3.7, this Agreement is for the exclusive benefit of Farmer and Client and not for the benefit of any third party including, without limitation, any employee, family members, affiliate, or vendor of Farmer or Client.

9.9 Translations Not Binding

Client may provide Farmer with a Spanish translation of this Agreement and other explanatory materials. Client does so as a convenience. Should there be any ambiguity or conflict between the English and Spanish language versions of these documents, the English language versions will control. They, not the Spanish translations, are the official, legally-binding documents.

9.10 Further Assurances

Client and Farmer 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 including, without limitation, documents relating to production and food safety, and to account for and document those activities.

9.11 Force Majeure

Neither party will be required to perform or be held liable for failure to perform if nonperformance is caused by strikes, work stoppages, or labor demands or difficulties, labor shortages or inability to procure labor, shortages of equipment, materials, or supplies, shortages or lack of cooling or processing facilities, war, hostilities, or national emergency, acts of God, the elements, mechanical breakdowns, power failures, or pesticide or GMO contamination not due to Farmer's acts or omissions, or any other causes beyond the control of the party unable to perform. The non-performing party will notify and consult with the other regarding the event and how to minimize its impact, and in all cases will make commercially reasonable efforts to address the problem and carry out its obligations.

9.12 Governing Law; Jurisdiction

This Agreement will be governed by California law. Farmer consents to the exclusive jurisdiction of the state and federal courts for [_____], California.

9.13 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

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California Food and Agricultural Code Provisions

FOOD AND AGRICULTURAL CODE § 56271

Every commission merchant, that receives any farm product for sale as a commission merchant, shall promptly make and keep a correct record which shows in detail all of the following with reference to the handling, sale, or storage of such farm product:

- (a) The name and address of the consignor.
- (b) The date it was received.
- (c) The condition and quantity upon arrival.
- (d) Date of such sale for the account of the consignor.
- (e) The price for which it was sold.
- (f) An itemized statement of the charges to be paid by the consignor in connection with the sale. Any services rendered for which charges are made, if not filed with the director, shall be charged at cost if not covered by a written contract. Cost-supporting data shall be available for verification.
- (g) The names and addresses of all purchasers if the commission merchant has any financial interest in the business of the purchasers, or if the purchasers have any financial interest in the business of the commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in such records following the name of any such purchaser.
- (h) A lot number or other identifying mark for each consignment, which number or mark shall appear on every sales tag and every other essential record which is needed to identify each consignment from receipt through final sale. When requested by the consignor, as provided by Section 56281, a lot number shall appear on each individual farm product container. When containers are on pallets, then only the exposed containers shall be marked.

When stamping or otherwise identifying each container is impractical due to the type of packaging, the container need not be marked.

- (i) Any claim which has been or may be filed by the commission merchant against any person for overcharges or for damages which result from the injury or deterioration of such farm product by the act, neglect, or failure of such person. Such records shall be open to the inspection of the director and the consignor of the farm product for whom such claim is made.

FOOD AND AGRICULTURAL CODE § 56272.

When requested by his consignors, a commission merchant shall, before the close of the next business day following such request, transmit to the consignor a true written report of the quantity sold and the selling price.

FOOD AND AGRICULTURAL CODE § 56273.

The full amount which is realized from the sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sales, as provided in Section 56273.1, shall be remitted to the consignor within 10 days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing.

FOOD AND AGRICULTURAL CODE § 56280

- (a) A commission merchant shall notify each consignor with whom he or she does business of this section. The notice shall be given in writing prior to the shipping season of the particular farm product.
- (b) No charge shall be made against a consignor's account for a downward price adjustment or a reduction in quantity of farm products delivered due to a breach of contract, unless the commission merchant has, in his or her files, a federal-state inspection certificate, issued pursuant to the United States Agricultural Marketing Act of 1946, (7 U.S.C. 1621, et seq.), indicating the type and the extent of the substandard condition of the lot involved in the breach of contract, thereby supporting the amount charged against the consignor's account. The commission merchant need not obtain a federal-state inspection certificate unless the lot involved is of a substandard condition.
- (c) Notwithstanding Section 56281, this Section does not preclude a consignor from agreeing to a downward price adjustment or a reduction in the quantity of farm products delivered and waiving the right to inspection when the agreement was made prior to the shipping season of the particular farm product and was in writing.

(d) The federal-state inspection certificate may be substituted by a private third-party inspection, based on the standards prescribed under the United States Agricultural Marketing Act of 1946, if the director determines, to his or her satisfaction, that a federal-state inspection certificate could not reasonably be obtained. If the director determines, to his or her satisfaction, that neither a federal-state inspection certificate nor private, third-party inspection, can be reasonably obtained, a signed statement of two or more disinterested, or otherwise independent parties, who have sufficient knowledge, acquired through education or experience, to evaluate the farm product involved, may be used as substitute for the federal-state certificate or third-party inspection, in order to make a statement as to the quality and condition of the lot of farm product at the time of inspection.

- (e) Where the condition of the lot is not substandard but for other reasons, including a decline in market demand, there is a downward price adjustment, the commission merchant shall affirm, in writing, that the lot was at least of standard quality at the time of sale.

The affirmation shall be attached to, or made part of, the records of the consignment. (f) As used in this section, "lot" means the farm product identified by the procedure set forth in subdivision (h) of Section 56271.

FOOD AND AGRICULTURAL CODE § 56281.

A commission merchant shall notify each consignor with whom he or she does business of the provisions affecting the consignor that are contained in Sections 56271, 56272, 56273, 56280, 56282, and 56351, and this section. The notice shall be given in writing prior to the shipping season of the particular farm product. The notice shall include a form whereby the consignor may request notice of any adjustment by the commission merchant. The form shall also include a provision whereby the consignor may request that lot numbers be affixed on each individual farm product container as provided in subdivision (h) of Section 56271. Each commission merchant shall keep the records necessary to prove that the notices were given to each consignor in accordance with this section. A licensee operating as a commission merchant shall notify the consignor of any adjustment on a transaction, and provide reasons for the adjustment, within 48 hours.

If the commission merchant is unable to contact the consignor by telephone or in person, the notification shall be immediately provided by mail.

FOOD AND AGRICULTURAL CODE § 56282

(a) Pursuant to this chapter, upon the verified complaint of the consignor, the secretary may disallow to a commission merchant, all or part of, any adjustment charged back to any consignor similarly situated, if the secretary determines that there is insufficient justification of the condition or circumstances requiring the adjustment.

(b) In determining whether there is insufficient justification for an adjustment, the secretary shall first determine if any waivers or agreements have been entered into pursuant to this chapter. If a waiver or agreement has been entered into and the secretary determines that the waiver or agreement complies with Section 56280.5 and does not otherwise violate this chapter, the secretary's inquiry in determining this adjustment shall be governed by the terms and conditions of the waiver or agreement.

(c) If there is no waiver or agreement, or if the waiver or agreement violates this chapter, as determined by

the secretary, in determining whether there is insufficient justification for an adjustment, the secretary shall consider, among other things, the following:

(1) The certificate issued pursuant to Section 56280 or 56351 does not support breach of contract.

(2) The perishability of the farm product involved and the timely issuance of the certificate pursuant to Section 56280 or 56352.

(3) Market reports or other market evidence does not support a downward price adjustment in accordance with Section 56279.

FOOD AND AGRICULTURAL CODE § 56351

A claim may not be made against the seller of any farm product by a licensee pursuant to this chapter, and no credit may be allowed to such licensee against another licensee or a producer of any farm product by reason of damage to or loss, dumping, or disposal of any farm product which is sold to such licensee, in any payment, accounting, or settlement which is made by the licensee to the producer or other licensee, unless the licensee has secured and is in possession of a certificate issued by a county agricultural commissioner, a county health officer, the director, a duly authorized officer of the State Board of Health, or by some other official now or hereafter authorized by law. The certificate shall state that the farm product which is involved has been damaged, dumped, destroyed, or otherwise disposed of as unfit for human consumption or as in violation of the fruit and vegetable standards which are contained in Division 17 (commencing with Section 42501) of this code.

A private third-party inspection based on the standards prescribed in the United States Agricultural Marketing Act of 1946 may be substituted for such certificate if the director determines that an inspection certificate cannot be reasonably obtained. Where the director determines that neither an inspection certificate nor a private third-party inspection can be reasonably obtained, the signed statement of two or more disinterested or otherwise independent parties who have sufficient knowledge acquired through education or experience to evaluate the farm product involved may be used to describe the type and extent of the quality and condition factors present upon inspection.