

Memorandum of Understanding

1. Purpose of document

This Memorandum of Understanding (“MOU”) sets out understandings regarding branding and other aspects of the Market Match program (“Program”) established by [____]. Members are located throughout [____] and include both operators of certified farmers’ markets and community organizations that work with recipients of nutrition benefits. This MOU is designed to facilitate consistent branding and communication about the Program through use of a common trademark and messaging platform, and through information and resource sharing. The parties to this MOU are the member of the [____] consortium identified on the signature page (“Member”) and [____], in its capacity as program manager (“Program Manager”) of the Program.

2. Program

Market Match is designed to offer incentives to federal nutrition benefit recipients to purchase fruits, vegetables, tree nuts, and dried fruits (together, “specialty crops”) at [____] farmers’ markets. Members promote the use of nutrition benefits in their communities and provide a match to increase buying power for participants in those programs. Members may choose which of CalFresh, WIC, FMNP, and other federal nutrition benefit programs to accept and incentivize through their local program based on their community needs, with the underlying goal of increasing access to healthy foods for benefit recipients.

3. Branding and communication

3.1 Marks and permitted use

Member may use the Market Match name, taglines, and logo set out in **Exhibit A** (together, “Marks”) for the sole purpose of operating the Program. Member’s use may include, for example, display on: (a) signage or banners at a market or nutrition benefit sign-up site; (b) websites, press releases, brochures, or other educational or outreach materials; (c) Market Match scrip or similar materials; and (d) grant applications, reports and other fundraising materials. Member may provide signage displaying the Marks to appropriate market vendors and permit them to use the Marks at the market in accordance with this MOU.

3.2 Communication

In order to facilitate consistent Program branding and messaging across the state, Member will use the Marks and strive to communicate about the Program in accordance with the style guide and instructions provided by Program Manager. The current style guide is attached to this MOU as **Exhibit A**.

3.3 Access and materials

Program Manager will provide Member with electronic versions of the Marks for use by Member in accordance with this MOU. Member will be responsible for procuring and paying for materials displaying the Marks.

3.4 Non-permitted uses

In order to help maintain the integrity of the Marks, Member may not use the Marks: (a) on materials that promote a market itself or other program or relate to issues unrelated to the Program or its purpose; (b) on merchandise, such as t-shirts and hats, that promote a

market or organization; or (c) for any purpose not related to the Program. In addition, and for clarity, Member will not use the logo of the California Department of Food and Agriculture or of any other governmental agency on materials displaying the Marks or otherwise relating to the Program.

3.5 Approval of proposed uses of the Marks

For brand protection and consistency reasons, Member will provide to Program Manager, for Program Manager's review, samples of all proposed uses of the Marks. Program Manager may object to any such sample by providing notice within seven days of receipt of the sample. Member will refine the use reflected in the sample in line with Program Manager's comments. Member will not use the Marks without first obtaining such sample review and approval, and all of Member's uses of the Marks must conform to approved samples. If Program Manager determines that any actual use by Member does not conform with an approved sample or is otherwise not approved by Program Manager, Member will on Program Manager's request stop the use entirely or take such corrective actions as may be specified by Program Manager.

3.6 Other agreements regarding use of the Marks

For brand protection and consistency reasons, Member will: (a) only use the Marks in the forms provided to or otherwise specified to Member by Program Manager; (b) place on any item bearing the Marks such trademark or service mark notice as Program Manager may request; (c) not combine the Marks with any other trademark, word, symbol, letter, design or mark; (d) not use the Marks as part of its organizational or service name or Internet domain or style; (e) not use the Marks in such a way as to give the impression that the Marks are its property; (f) not use any Marks in connection with any activity that may impair the goodwill associated with [_____] or in a context that is inconsistent with [_____]’s values and mission; or (g) not, during or after the term of this MOU, challenge or infringe the Marks or any related registrations. Program Manager may from time to time refine or remove or substitute individual marks included in the Marks because of changes in Market Match strategy, branding evolution, or otherwise.

3.7 Administration of the Marks

As an outcome of its role, and to facilitate brand development, [_____] is and will be considered the sole owner of the Marks. For clarity, and to protect the Marks, Member's rights to use the Marks under Section 3 will be considered non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free licenses by [_____] to Member solely for the purposes set out in Section 3. Member acknowledges that it has no interest in the Marks other than the rights granted under this Agreement and that [_____] will remain the sole and exclusive owner of the Marks. [_____] has authorized [_____] as an aspect of its role as Program Manager, to manage the use of the Marks as contemplated by this MOU. Member acknowledges that [_____] may assign and transfer ownership of the Marks, and its rights and obligations under this MOU, to Program Manager or other person as may be appropriate in line with the evolution of the Program. Neither [_____] nor Program Manager is obligated to file any application for registration of any of the Marks, secure any rights in any of the Marks, maintain any trademark registration for the Marks, or pursue infringement or other claims, and each may make all such decisions in its discretion.

4. Operations

4.1 Contact person

Member will appoint one individual to act as principal contact person and to coordinate activities in connection with Program operations and communications, and will identify that person to the Program Manager.

4.2 Technical support

Program Manager will provide limited technical support to Member relating to Program operations, such as sharing with Member best practices and resources developed by other [_____] participants, and consulting as feasible on such matters as (a) establishing, implementing, and promoting a working program (i.e., choosing a market match dollar amount); (b) redemption tools and techniques; (c) vendor education; (d) marketing and promotional materials; (e) designing and ordering scrip; and (f) development of appropriate collateral, outreach materials, and collective marketing, all as Program Manager determines appropriate.

4.3 Program data and reporting; confidentiality

In the spirit of collaboration and information sharing, Member will complete evaluation instruments as may be provided by Program Manager, and will collect and provide data to Program Manager about Program operations and results. Such data may include, for example, data about Program design, functioning and usage; market customers; customer behavior with and without availability of incentives; vendor sales; and other matters as reasonably requested by Program Manager. Program Manager will take appropriate measures to maintain the confidentiality of such information, it being understood that Program Manager may use such data in analyzing Program results, and in reporting, on a no-name basis, to other [_____] members, funders, and others about Program results. Program Manager will not disclose Program results information identifiable to Member without first obtaining Member's consent.

4.4 Program operations

The purpose of the Program is promotion and purchase of specialty crops at farmers' markets by recipients of federal nutrition benefits. Member may not permit Market Match coupons to be used for prepared food items or for items that are not specialty crops, provide cash or credit for Market Match coupons, or permit vendors to charge a higher price to users of Market Match coupons or allow the exchange of specialty crops purchased with Market Match coupons for cash or other items. Member's use of the Marks is conditioned upon operation by Member of the Program in accordance with this MOU.

4.5 Compliance

Member will each carry out the Program in a diligent and professional manner and in accordance with applicable law, and with qualified and properly trained personnel. Member will not in operating the Program discriminate against any customer or vendor based on race, ethnicity, religion, sexual orientation, marital status, nationality, age, politics, disability (physical or mental, including HIV and AIDS), veteran status, or gender.

4.6 Public communications

Program Manager, [_____] and [_____] may identify Member as a [_____] participant, including using its name, logo, and website address, in their respective Program, internal, and external communications such as websites, outreach materials, and Program guidelines and toolkits. Member, Program Manager, [_____] and [_____] will all comply with requirements regarding press releases and other public communications as may be contained in funding or other agreements relating to the Program.

4.7 Public policy positions

For clarity, [_____] as a consortium, does not and will not lobby in its name. Member, in its capacity as a [_____] participant, will not lobby or otherwise take public policy positions in the name of [_____] or any other participant. Member agrees and acknowledges that it will comply with any requirements in other Program-related agreements relating to lobbying and political activities, and that any lobbying or advocacy activities undertaken by Member in its own name will not be imputed to Program Manager, [_____] [_____] or any other [_____] participant.

4.8 Participation in [_____] meetings

Member will participate in at least 75% of the monthly calls among [_____] members. Member will participate in and bear the travel and other expenses of its attendance at the periodic face-to-face meetings of [_____] members.

5. Term and Termination

5.1 Expiration

This MOU will have a one-year term and will terminate on December 31 of each year, unless terminated under any of the other provisions of this Section 5. If Member wishes to renew this MOU, Member will so advise Program Manager no later than 60 days before the expiration of the then-current term. Member must be in compliance with this MOU at the time Member makes its request and again at the time of commencement of the renewal term, and Program Manager must approve the renewal. Program Manager will notify Member, no later than 30 days before the expiration of the current term, whether or not the MOU will be renewed, it being understood that Program Manager may make that decision in its sole discretion. If the Agreement is not renewed, it will terminate at the end of the current term. Failure by Member to timely deliver a notice of renewal will be treated as a final decision not to renew.

5.2 Member choice

Subject to any other agreements with [_____] or Program Manager to which it may be a party, Member may on its own terminate this MOU by providing written notice of that decision to the other. Such a termination will be effective 30 days after delivery of the notice by Member to Program Manager.

5.3 Noncompliance

Program Manager may immediately terminate this MOU by giving written notice to Member if (a) Member dissolves, liquidates, or ceases to engage in its operations; or (b) Member breaches any of its obligations under this MOU (including, without limitation, those relating to use of the Marks), and fails to cure the breach within 15 days after receipt of notice of such breach from Program Manager, all as determined by Program Manager in its sole discretion.

5.4 Consequences of termination

Upon the expiration or termination of this Agreement, Member will promptly cease all use of the Marks, and Member and Program Manager will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination. Member will at Program Manager's request send to Program Manager, or destroy, any items bearing the Marks. Sections 6, 6.1, 6.2, 6.3, and 7 will survive the expiration or termination of this Agreement.

5.5 Additional protections

In order to protect the Marks, and notwithstanding any other provision of this MOU, Program Manager will have all the rights and remedies which it may have, at law or in equity, with respect to the breach or termination of this MOU, the enforcement of all rights relating to the establishment, maintenance, or protection of the Marks, and the award of damages or equitable relief in connection with breach of this MOU by Member. Member acknowledges that Section 5.3 will not be considered an exclusive remedy or in any way limit Program Manager from enforcing other rights or remedies, including injunctive relief.

6. Relationship

6.1 Relationship

Member, Program Manager, [_____] and [_____] agree that neither this MOU nor participation in [_____] creates an association, joint venture, partnership, or any other entity among them or any [_____] members, nor does it create any liability for one

member based on the acts of another member. No member will have any right, power, or authority to enter into any agreement for or on behalf of any other member or to incur any obligation or liability or otherwise bind any other member.

6.2 Responsibility for own actions

Member will have sole responsibility for the planning, management, and implementation of its own activities relating to the Program including, without limitation, establishing and maintaining systems, hiring and managing employees, developing outreach materials, and paying expenses, whether or not Member receives technical support from Program Manager, [____], or [____]. It is understood that Member may be party to other contracts with [____] participants. Such contracts will remain independent of this MOU.

6.3 Organizational developments

Member will notify Program Manager promptly of: (a) any changes in its management team or key personnel responsible for carrying out its activities relating to the Program; (b) any loss of its tax-exempt status; (c) any material adverse changes in the amount or source of financial support that it has secured to fund the Program; or (d) 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 the Program.

6.4 Indemnification

Member will defend, indemnify and hold Program Manager, [____] and other [____] members, and their respective directors, officers, funders, and employees (together, "indemnified parties") harmless against all third party claims, liabilities, losses, damages, and expenses, including reasonable attorney's fees and expenses, resulting from Member's operation of the Program, Member's activities under or breach of this MOU, or Member's operations and activities generally. Member will have no obligation to indemnify any indemnified party to the extent the liability is caused by such indemnified party's gross negligence or willful misconduct.

7. General Provisions

7.1 Entire agreement; amendment

This MOU represents the final, complete and exclusive statement of Program Manager, [____], [____], and Member and supersedes all existing agreements and prior or contemporaneous communications among them, whether oral or written, relating to branding and communications aspects of the Program. If there are any inconsistencies between other Program branding documents and this MOU, this MOU will control. This MOU may be amended only as stated in a written document signed by Program Manager, [____], and Member that states that it is an amendment to this MOU. Member may not assign its rights or delegate its duties under this MOU to anyone else without the prior written consent of Program Manager.

7.2 Severability and waiver

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

7.3 No third party beneficiaries

Except as specifically provided in Section 6.4, this MOU is for the exclusive benefit of the parties and not for the benefit of any third party including, without limitation, any client or funder of Member, or any customer or visitor to a market operated by Member.

7.4 Counterparts

This MOU 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.

Program Manager, [_____] and Member signed this MOU as of _____.

[name of Member]

[_____]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[_____]

By: _____

Name: _____

Title: _____

Exhibit A: [_____] Style Guide