

## CERTIFICATION TRADEMARK LICENSE

This Certification Trademark License (hereinafter “Agreement”) is made by and between the State of Ohio, acting by and through the Ohio Department of Agriculture (hereinafter “Licensor”), located at 8995 East Main Street, Reynoldsburg, Ohio 43068, and:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

County: \_\_\_\_\_

Billing Contact: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

Marketing Contact: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

(hereinafter “Licensee”). In consideration of the mutual promises contained herein, Licensor hereby grants to Licensee the non-exclusive right to use the OHIO PROUD Program Marks and logotypes.

**WHEREAS**, Licensor is the registrant and owner of the following trademark registration numbers: 3658929 for the design and letters trademark “Ohio Proud Made in Ohio – Grown in Ohio” and any variations thereof; 3655495 for the design and letters trademark “Ohio Proud Made in Ohio” and any variations thereof; and 3670242 for design and letters trademark “Ohio Proud Grown in Ohio” and any variations thereof (collectively the “Marks”);

**WHEREAS**, the Marks are registered as Certification Marks for identifying, *inter alia*, agricultural commodities as grown and/or made in Ohio;

**WHEREAS**, Licensee is in the business of [growing, making, distributing and/or selling] agricultural commodities; and

**WHEREAS**, Licensee desires to use the Marks in connection with the sale of agricultural commodities grown and/or made in Ohio.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties hereto

agree as follows:

1. **Definitions.** The capitalized terms used herein shall have the respective meanings as defined above and in this paragraph 1:
  - (a) “**Marks**” shall mean the design and letters certification trademarks identified in trademark registration numbers 3658929, 3655495 and 3670242 and any variations thereof.
  - (b) “**Territory**” shall mean the United States of America.
  - (c) “**Product**” shall mean any agricultural commodity that meets the definition of “product” and “produced in Ohio” as specified in rule 901:4-6-01 of the Ohio Administrative Code.
  - (d) “**O.A.C Rules**” shall mean rules 901:4-6-01 through 901:4-6-05 of the Ohio Administrative Code.
2. **Grant.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a non-exclusive, non-transferable license to use the Marks on Product labels and in advertisements for a Product in the Territory provided that all such use of the Marks shall be in accordance with the terms of this Agreement and the O.A.C Rules.
3. **Assignment and Sublicense.** This Agreement and all rights and duties hereunder are personal to Licensee and shall not be assigned, mortgaged, sub-licensed or otherwise encumbered by Licensee or by operation of law.
4. **Ownership.**
  - (a) Licensee acknowledges and agrees that (i) the Marks and all rights therein and the goodwill associated therewith throughout the Territory belong to Licensor; (ii) Licensee is a “related company” within the meaning of 15 U.S.C. § 1127 and Licensee’s use of the Marks pursuant to this Agreement inures to the benefit of Licensor; and (iii) nothing in this Agreement conveys to Licensee any right, title or interest in or to the Marks other than the right to use the Marks in accordance with the provisions of this Agreement.
  - (b) Licensee agrees that it will not challenge or attack Licensor’s rights to the Marks or the validity of this Agreement, will not take or fail to take any action which, by the taking or failure to take such action, has a result of impairing such rights of Licensor, will not use the Marks on goods or services other than a Product and will not do anything else inconsistent with the rights of Licensor.

5. **Use and Quality Control.**

- (a) Licensee acknowledges that the license provided hereunder was granted based on representations and assurance provided by Licensee in its application for license under the O.A.C Rules. Licensee further represents that, to the best of Licensee's knowledge, the information set forth in Licensee's application is true and accurate. In the event Licensee's products cease to comply with the O.A.C Rules, Licensee will immediately advise Licensor of said noncompliance and will immediately cease any and all use of the Marks. Licensee acknowledges that any misrepresentations set forth in the application and/or subsequent renewal applications constitute a material breach of this Agreement.
- (b) Prior to using the Marks on Product labels, the Licensee shall submit a sample of each proposed label to Licensor for its approval. No label employing the Marks shall be used without prior approval by Licensor. Upon approval by Licensor, Licensee agrees to employ the Marks in a manner such that all labels and advertising used thereafter shall be of a standard equal to the sample initially approved by Licensor.
- (c) The Licensee may only use the Marks in connection with the advertisement of a Product after receiving approval of a label for that Product by Licensor as specified in Paragraph 4(b) herein.
- (d) The Marks shall, whenever possible, be reproduced in the original colors. If these colors cannot be used then the Marks shall be printed in black and white or the darkest practicable color scheme.
- (e) When requested in writing, the Licensor shall have the right to require from time to time that the Licensee submit samples of labels and/or advertising that use the Marks to permit Licensor to determine whether Licensee's use of the Marks substantially conforms to the terms of this Agreement.

6. **Maintenance of the Marks.** Licensee agrees to cooperate fully with Licensor in maintaining the Marks in Licensor's name, for use in connection with the stated purpose of the Marks. Where samples of products and advertisements are required for such maintenance, the Licensee agrees to supply the samples at no cost to Licensor. Otherwise, the cost of maintenance shall be Licensor's responsibility.

7. **Infringement.** Licensee agrees to promptly notify Licensor of (a) any unauthorized use of the Marks by third parties, and (b) any infringement or similar third-party claims based on Licensee's use of the Marks, as soon as any such use or claim may come to Licensee's attention. Licensor shall have the sole right and discretion to take action to obtain relief from such unauthorized use or claim and, at the request of Licensor, Licensee agrees that it will

cooperate with Licensor to protect or to defend its rights in the Marks and/or Licensee's right to use the Marks under this Agreement.

8. **Term.** This Agreement shall be binding upon both parties on the last day and year set forth below on the last page of this Agreement and shall expire on December 31, 2020.

If the Licensee renews any or all of its registered Products in accordance with O.A.C Rule 901:4-6-03, this Agreement shall automatically renew effective with the registration renewal, and shall expire on December 31<sup>st</sup>, of the following calendar year.

9. **Termination.**

- (a) Either Licensor or the Licensee may immediately and unilaterally terminate this Agreement, in whole or in part, upon written notice to the other.
- (b) This Agreement will automatically terminate in the event Licensee dissolves or ceases to do business for more than ninety (90) consecutive days, unless otherwise agreed upon in writing and signed by both parties.
- (c) Upon expiration or termination of this Agreement (i) all rights in and to the Marks and the goodwill associated therewith shall remain with Licensor, and (ii) Licensee, its receivers, trustees, or successors shall have no right to continue using the Marks and shall immediately discontinue all use of the Marks and any trade symbol or designation confusingly similar thereto.

10. **Warranties.**

- (a) The Licensee warrants that it has no outstanding final judgments against it by the State, including tax liabilities, and agrees that any payments incurred by the State in this Agreement may be applied against such liabilities currently owing or incurred in the future.
- (b) The Licensee warrants it is not listed with the Secretary of State for unfair labor practices, pursuant to O.R.C Section 121.23.
- (c) The Licensee warrants it has not exceeded the limitations in O.R.C Section 3517.13(I) and (J) in making any contributions to the holder of the public office having ultimate responsibility for the award of this Agreement or to his campaign committees.
- (d) The Licensee affirmatively represents and warrants to the State that it is not subject to a finding for recovery under O.R.C Section 9.24, or that it has taken the appropriate remedial steps required under O.R.C Section 9.24 or otherwise qualifies under that

Section. The Licensee agrees that if this representation and warranty is deemed to be false, this Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by the State hereunder shall be immediately repaid to State, or an action for recovery may be immediately commenced by State for recovery of said funds.

11. **Indemnification.** Licensee shall indemnify, defend and hold harmless Licensor from any and all liabilities, claims, causes of action, suits, proceedings, and all damages and expenses (including any reasonable attorneys' fees) incident thereto for which Licensee may be liable or may incur or be compelled to pay arising out of any actions, whether by omission or commission, of Licensee, its servants, agents or employees, in connection with or arising out of its use of the Marks.
12. **Compliance with Law.** Licensee agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder, including the Drug-Free Workplace Policy. Further, to establish its compliance with the Policy, Licensee agrees to sign the Certificate of Drug-Free Workplace Compliance, attached hereto as Exhibit A and made a part hereof.
13. **Ohio Ethics Law Requirement.**
  - (a) The Licensee shall adhere to the requirements of the Ohio Ethics Law as provided by O.R.C Section 102.04. Division (A) of this Section prohibits a state official or employee from receiving compensation, other than from his own agency, for personal services rendered in a case, proceeding, application, or other matter before any state agency. Division (B) of this Section prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding.
  - (b) It is understood by the parties that non-elected state officials and employees may qualify for an exemption under O.R.C Section 102.04 Division (D), if: (1) the agency with which the official or employee seeks to do business is an agency other than the one with which he serves; and, (2) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files an O.R.C Section 102.04(D) statement with the Ohio Ethics Commission, the agency with which he serves, and the agency with which he seeks to do business. The statement must include a declaration that the official or employee disqualifies himself for a period of two years from any participation in his official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.
  - (c) It is expressly understood and agreed to by the parties that a failure by the Licensee to file a declaration statement as required under O.R.C Section 102.04 Division (D) may be considered by Licensor as a breach of a material condition of this Agreement and Licensor may, if it so elects, void this Agreement.

14. **Compliance with Executive Order 2011-12K.** In accordance with Executive Order 2011-12K, Licensee shall not utilize sources outside the United States in the fulfillment of this Agreement. Licensee shall not subcontract any part of this Agreement without the express written consent of Licensor. If a subcontract is approved by Licensor, this provision applies to the subcontractor as well as to the Licensee. Should this provision be violated by either the Licensee or any subcontractor, this Agreement shall be considered void *ab initio* and all moneys paid to Licensee or any subcontractor by Licensor shall be refunded.
15. **Relationship Of The Parties.** Licensee shall not in any manner or respect be the legal representative or agent of Licensor and shall not enter into or create any contracts, agreements, or obligations on the part of Licensor, either expressed or implied, nor bind Licensor in any manner or respect whatsoever; it being understood that this Agreement is only a contract for the license of the Marks.
16. **No Joint Venture.** Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venture or of franchisor/franchisee.
17. **No Waiver.** This Agreement may not be waived or modified except by an express agreement in writing signed by both parties. There are no representations, promises, warranties, covenants or undertakings other than those contained in this Agreement with respect to its subject matter, which represents the entire understanding of the parties. The failure of either party hereto to enforce, or the delay by either party in enforcing, any of its rights under this Agreement shall not be deemed a continuing waiver or a modification thereof and either party may, within the time provided by applicable law, commence appropriate legal proceedings to enforce any or all of such rights.
18. **Governing Law.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performance hereunder.
19. **Communications.** All notices and other communications from one party to the other shall be addressed to the parties at the addresses given above.
20. **Severability.** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
21. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter hereof, and all prior proposals, discussions or writings are

superseded hereby. The terms of this License shall be binding upon and shall inure to the benefit of the parties and their receivers, trustees, or successors.

22. **Facsimile.** This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument. A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless, be binding and enforceable.

**IN WITNESS WHEREOF**, Licensor through its legally appointed Director and Licensee through its duly authorized representative have caused this Agreement to be executed on the last day and year set forth below.

LICENSEE:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

STATE OF OHIO  
Department of Agriculture (“ODA”)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Dorothy Pelanda  
Director, ODA

Exhibit A

OFFICE OF DRUG-FREE WORKPLACE PROGRAMS  
DIVISION OF STATE PERSONNEL  
DEPARTMENT OF ADMINISTRATIVE SERVICES

Certificate of Drug-Free Workplace Compliance

The undersigned certifies that, while working on state property, he/she will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State