

**TERMS & CONDITIONS  
OREGON TILTH CERTIFICATION SERVICES AND TRADEMARK USE**

These Terms and Conditions - Oregon Tilth Certification Services and Trademark (“Terms and Conditions”) Use are incorporated by reference and made a part of the Oregon Tilth Organic System Plan and the Oregon Tilth Organic System Plan Update Application & Agreement (“**Agreement**”) executed contemporaneously herewith between Oregon Tilth Certified Organic (“OTCO” or “Licensor”) and Operator (hereinafter “**Operator**” or “**Licensee**”).

**RECITALS**

- A. OTCO is an accredited organic certification agency.
- B. Operator desires to represent certain products as “certified organic” by OTCO.
- C. OTCO is the owner of the entire right, title and interest in and to a number of trademarks, names and logos (cumulatively known as “**Intellectual Property**”), which are listed on **Exhibit A**, and OTCO is responsible for the verification and use of all Intellectual Property referenced herein for organic products produced and labeled in compliance with acceptable organic standards and procedures and the U.S. National Organic Program (NOP) set forth at 7 CFR Part 205, in addition to other various organic standards and regulations for which certification services have been requested to promote organic agriculture. Operator acknowledges that it is responsible for complying with all laws, regulations and OTCO requirements necessary and appropriate to protect the integrity of the Intellectual Property.
- D. The parties desire that certain products listed by Operator on its OTCO certificate (the “**Certificate**”) be described as “certified organic by Oregon Tilth” or similar phrase (the “**Designation**”). The parties acknowledge that obtaining and using the Designation to describe any of Licensee’s products is conditioned on Licensee fully complying with OTCO’s Program Manuals (the “**Manuals**”) referenced herein.
- E. Operator acknowledges that the certification services provided by OTCO pursuant to this Agreement are conditioned on Operator’s agreement to and compliance with this Agreement, including these Terms & Conditions.

**1. GRANT OF LICENSE:** During the term of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, the non-exclusive right and license to use, display, publish and reproduce the Intellectual Property on organic products certified by OTCO. If, during the term of this Agreement, OTCO develops additional trademarks, names, or logos, they may be added to Exhibit A and may, be licensed hereunder as Intellectual Property of OTCO for use by the Licensee only after notice to the Licensee by OTCO. All uses of the Intellectual Property by Licensee shall faithfully and accurately reproduce the color, design and appearance without embellishment of the Intellectual Property. Licensee shall not adopt or use any trade name, logo, mark, graphic, slogan, or designation that includes or is confusingly similar to, or a simulation or colorable imitation of, the Intellectual Property. Unless such phrases are specifically listed on Exhibit A, Licensee agrees that it shall not represent or describe, expressly or impliedly, its products as “selected,” “approved,” “warranted,” “preferred” or other similar endorsement.

**2. CERTIFICATION AND STANDARDS:** During the term of this Agreement, Operator may designate on the products listed on its OTCO certificate (the “**Certificate**”) that such products are “certified organic by Oregon

Tilth” or similar phrase. Licensee hereby agrees to conform, on an ongoing basis, its operations and the production of its products with OTCO’s requirements which include, but are not limited to: relevant standards, criteria, regulations, directives, memos, notifications, program handbook guidelines, labeling requirements, other guidelines, export arrangement provisions, and any and all notifications or changes that affect the OTCO and its operators set forth in the Manuals, and as the Manuals are subsequently amended from time to time (hereinafter individually and collectively the “**OTCO Manual Requirements**”). Operator acknowledges that the ability to use the Intellectual Property is conditioned on Operator’s strict compliance with the OTCO Manual Requirements. Adequacy of Operator’s Compliance shall be determined by OTCO in its sole discretion. Licensor hereby agrees to notify Licensee of any changes or updates to the Manuals within at least thirty (30) days or as prescribed by a time in the Notification of Change that such manuals are updated; provided, however, that to the extent that such changes or updates reasonably would be foreseen to cause a material change in Operator’s production methods, Licensor shall notify Operator promptly, within timelines indicated in the OTCO manuals of any such changes or updates. If necessary, Licensee shall update its production methods to comply with the OTCO Manual Requirements as soon as is reasonably practicable; based on risk, practicality of changes, implementation timelines, regulatory requirements and industry practice.

**3. ACCESS:** Operator agrees to permit authorized OTCO representatives to access to all aspects of Operator’s operations and the operations of its subcontractors, including products, facilities, personnel and documents, to the extent necessary or appropriate in order to verify that Operator is and has followed all OTCO Manual Requirements to the reasonable satisfaction of OTCO. Access shall be subject to OTCO’s employed and contract inspectors and laboratories complying with Operator’s on-site safety rules and confidentiality requirements. Access shall be undertaken in a manner that seeks to minimize potential disruption to Operator’s business operations. Operator agrees to provide access for the OTCO representatives onsite or virtually in cases of safety or security risk as agreed to by the Operator and OTCO. Operator acknowledges and consents to the exchange of information among representatives of certification agencies other than OTCO in the event order to conduct necessary investigations and supply chain traceability. Additionally, in the event Operator or its subcontractors use a certification other than OTCO, Operator acknowledges and consents to the exchange of information between OTCO and the other certification agency.

**4. INSPECTIONS AND AUDITS:** Operator agrees to permit, not less than once per year, on-site inspections with complete access to the facilities, equipment, operations and personnel relevant to the certification contemplated herein, including non-certified production and handling areas, structures and offices. All inspections shall be subject to the conditions for access set forth in Section 3 above. Operator further agrees that an OTCO representative may appear unannounced, to conduct an inspection, audit or investigation as may be required under the standards. Access may be subject to proper adherence to safety rules, and the availability of personnel needed to assist and observe the Inspector, as needed for training, and as required by government, accreditation bodies and/or certification body(s). Operator shall ensure that the OTCO inspector is not exposed or subject to sexual harassment or other unlawful conduct on basis of the inspector’s race, gender, age, national origin, gender identity, disability or any other protected characteristic or status.

Operator agrees to keep records of all complaints made known to Operator relating the compliance with relevant standards for the certification contemplated herein and make these records available to the Inspector and OTCO when requested. Records must demonstrate that Operator takes appropriate action and documents action taken with respect to such complaint(s) and any deficiencies found in products that affect compliance with the requirements for certification.

**5. PRODUCTS CERTIFIED:** Operator agrees that only those products specifically listed on the Certificate may be sold as “certified,” represented verbally or in writing as certified or be designated with OTCO’s Intellectual Property.

**6. ADDITIONAL PRODUCTS:** Operator agrees to inform OTCO of new products proposed for certification, to submit labels for approval, and not to sell or include the Designation on such products as certified until approved by OTCO. OTCO agrees to review all requests for new product labels and to notify Operator of its decision in a timely manner.

**7. VERIFICATION:** OTCO agrees to provide timely verification to third parties of products certified, upon request of Operator. OTCO reserves the right to charge Operator for costs incurred to provide verification to third parties, and pre-payment of such costs may be made a condition for OTCO's preparation and delivery.

**8. CONDITIONS:** Operator agrees that it will resolve all points of noncompliance identified by OTCO during the certification process. OTCO will notify Operator in writing of any noncompliance with this Agreement and the Manuals. Operator shall remedy such noncompliance within thirty (30) days of such notice, or within a time period mutually agreed upon by the parties in writing. Failure to remedy such noncompliance within specified time period shall be a default of this Agreement.

**9. COMPLIANCE AND DECERTIFICATION:** Operator agrees to inform OTCO and any relevant authorities, including but not limited to standard owners, state federal and local authorities or other appropriate authority without delay of any irregularity or infringement or changes affecting the organic status of their product or organic products received from other operators or subcontractors. Additionally, if any product is affected by the irregularity or infringement or change of its organic status, Operator must undertake to inform in writing the buyers of the product in order to ensure that the indications referring to the organic production method are removed from all affected products.

Operator agrees that failure to comply with this Agreement and the Manuals, including without limitation the fulfillment of applicable organic standards and procedures, or the full payment of all fees or reimbursements required by OTCO, shall be considered a default under this Agreement. Upon default by Operator, OTCO may seek any remedy available to it, including but not limited to the termination of this Agreement, and the denial, suspension or revocation of Operator's certification.

Specifically, for operators in the Global Organic Textile Standards (GOTS) program, operators are committed to comply with the relevant criteria of the GOTS, the Manual for the Implementation of GOTS, the Labelling and Licensing Guide and other provisions of the GOTS certification program as provided by the Global Standard GmbH.

**10. CONFIDENTIALITY AND RESPONSE TO SUBPOENA:** Operator acknowledges that the Manuals constitute valuable, special, and unique assets of OTCO. Such information shall be considered the confidential information of OTCO pursuant to this Agreement.

OTCO acknowledges that any information regarding Operator's business, including without limitation product formulas, production practices, trade secrets, customer lists, strategic plans, financial information, production, handling, warehousing information or any other non-public information to which OTCO may have access during any certification, inspection, audit or investigation is proprietary to Operator and constitute valuable, special and unique assets of Operator and such information shall be considered confidential information of Operator pursuant to this Agreement. Operator must provide copies of certification documents to OTCO in their entirety.

Except as otherwise required by law, each party hereby agrees that it shall not use the confidential information of the other party for any reason or purpose, except as required to fulfill its obligations under this Agreement, and will protect such confidential information from unauthorized use, access or disclosure in the same manner that it protects its most sensitive confidential information, but using not less than a reasonable degree of care.

In the event of either party's breach or threatened breach of this Section, the other party shall be entitled to a temporary restraining order or an injunction restraining and enjoining the party in breach or threatening a breach from using all or any part of the other party's confidential information. In addition to or in lieu of the above, a party may pursue all of the remedies available to it for such breach or threatened breach, including the recovery of damages and attorneys' fees from the breaching party.

In the event OTCO is served with a subpoena to produce Operator's confidential information or other information regarding Operator, OTCO shall provide notice to Operator by forwarding a copy of the subpoena to Operator prior to the compliance date stated in the subpoena. Operator acknowledges and consents to OTCO producing the entire contents of OTCO's database associated with Operator, including any confidential information of Operator contained therein, unless Operator provides OTCO with notice of its written objections not later than five (5) calendar days from the date that it received OTCO's notice. If Operator objects to the production of Operator's confidential information in response to the subpoena, it shall provide assistance to OTCO in filing a motion to quash, shall be responsible for all of OTCO's attorneys' fees and costs associated with filing such motion, and shall promptly pay a retainer in the estimated attorneys' fees reasonably required to prepare and file such a motion on OTCO's behalf. OTCO reserves the right to refrain from preparation of the motion to quash pending receipt of the retainer. In the event OTCO receives a custodian of records notice of deposition, Operator shall likewise reimburse OTCO in advance for all attorneys' fees and costs associated with the OTCO custodian's appearance for deposition.

OTCO reserves the right to exchange information with other approved Certification Bodies and accreditation bodies to verify relevant information, especially the certification status of Operator, its processes and products, as part of OTCO's ongoing review of certification.

The obligations set forth in this Section 10 shall survive any termination or expiration of this agreement.

## **11. INTELLECTUAL PROPERTY AND LOGO USE**

11.1 INTELLECTUAL PROPERTY: Licensor warrants that it is the owner of the entire right, title, and interest to the Intellectual Property. Licensor makes no other warranties or representations.

11.2. RESERVATION OF OWNERSHIP: OTCO reserves all rights of ownership in the Intellectual Property. Nothing in this Agreement shall be construed as an assignment of these rights.

11.3. GEOGRAPHICAL LIMITATIONS: Operator's license includes the right to use the Intellectual Property without geographical restriction, subject to compliance with all terms and conditions of this Agreement and all applicable state and federal laws and all international laws and conventions.

**12. PRE-APPROVAL:** The use of the Intellectual Property must be pre-approved by OTCO; this approval will not be unreasonably withheld. Operator agrees to provide copies of all labels, containers, packaging, wrapping material, advertising and promotional materials using the Intellectual Property to OTCO, prior to their use, for the purpose of confirming compliance with this Agreement. All costs associated with the creation of labels, containers, packaging, wrapping material, advertising and promotional materials that were created prior to receiving pre-approval by OTCO and that are subsequently denied approval for reasons of noncompliance are to be borne solely by the Operator.

**13. POST CERTIFICATION APPROVALS:** Operator agrees to inform OTCO of any changes to the organic management plan, as described in the Manuals, during certification, including, but not limited to changes of products, product formulation, acreage or facilities to be certified. Operator must submit organic management plan updates concerning this Agreement on an annual basis. Annual update forms and annual fees must be received at the OTCO office each year by the annual information update deadline, as described in annual

requests for renewal.

**14. FEES:** In consideration of certification services and for use of the Intellectual Property, Operator agrees to pay all certification costs and fees as specified in the Manuals and OTCO's fee schedule within 30 days of billing, after which time interest will be charged at 1.5% per month. Failure to timely pay all certification costs and fees may result in termination of this Agreement, and the denial, suspension or revocation of Operator's certification.

**15. TRANSFER OR ASSIGNMENT:** Operator shall not assign, transfer, or sublicense the use of any of the Intellectual Property, or allow their use by any subsidiary organization not inspected and certified by OTCO. If Operator becomes aware of any such use, Operator agrees to inform OTCO and to take any remedial measures deemed appropriate by OTCO. Failure on the part of Operator to comply with this term may result in termination of this Agreement, and the denial, suspension or revocation of Operator's certification.

## **16. INDEMNIFICATION**

16.1 INDEMNIFICATION BY LICENSOR: Licensor shall indemnify and hold harmless Licensee and its affiliates from and against all losses, damages, liabilities, claims, and expenses (including all legal costs such as attorneys' fees, court costs and settlement expenses) arising out of, connected with, or resulting from any allegation that the use of the Intellectual Property by Licensee infringes upon the Intellectual Property rights of any third party.

16.2 INDEMNIFICATION BY LICENSEE: Licensee shall defend, indemnify and hold harmless Licensor and its affiliates from and against all losses, damages, liabilities, claims, and expenses (including all legal costs such as attorneys' fees, court costs and settlement expenses) arising out of any third party claim resulting from Licensee's, or Licensee's employee's, agent's, affiliate's or client's, use, marketing, or implementation of the Intellectual Property in violation of this agreement.

16.3 PROCEDURES: The indemnified party shall give written notice to the indemnifying party promptly after learning of such claim, tender the defense and settlement of the claim to the indemnifying party, and provide the indemnifying party with reasonable assistance, at the indemnifying party's expense, in connection with the defense and settlement of such claim.

**17. INTEGRATION AND SEVERABILITY:** The Agreement, including these Terms & Conditions, as incorporated by reference into the Oregon Tilth Organic System Plan and Oregon Tilth Organic System Plan Update Application & Agreement, constitute the full and complete agreement between the parties and supersede all prior oral and written representations. No change, addition, or erasure of any printed portion of these Terms & Conditions or the Agreement shall be valid or binding on either party. In the event that any clause or section of this Agreement shall be determined to be invalid by a court, that portion of the Agreement which is invalidated can be severed from this Agreement, and the remaining provisions will remain in effect.

**18. TERMINATION:** Without limiting any other provision of this Agreement, the following provisions shall apply:

18.1 SURRENDER and WITHDRAW and Notice of Noncompliance: Operator may surrender organic certification and terminate this agreement at any time. If Operator misses the annual information update deadline, OTCO will send Operator a Notice of noncompliance of certification. This Notice shall provide Operator with a twenty-one (21) day period to take corrective measures. After twenty-one (21)

calendar days, if the issues are not resolved, OTCO will pursue Adverse Actions and Enforcement Procedures as set forth in the Program Manuals.

18.2 Operator agrees to inform in cases where Operator withdraws certification from OTCO, to inform in writing without delay, and understand that operator remains subject to any outstanding non-compliance(s) after its withdrawal. Operator accepts that OTCO retains the control file for a minimum of five (5) years after the date of withdrawal.

18.3 BREACH: Material breach by Operator of any clause of this Agreement, including without limitation unauthorized use of the Intellectual Property, shall constitute grounds for OTCO to terminate this Agreement and Operator's certification. If a breach occurs, OTCO will give Operator written notice of noncompliance, requesting corrective measures acceptable to OTCO. If Operator does not cure the breach or default within fourteen (14) calendar days of such notice, OTCO may terminate this Agreement. OTCO reserves the right to pursue any other legal remedy available to it, including but not limited to any action to recover damages and to remedy trademark infringement, and may notify third parties of termination. Upon termination of this Agreement, Operator will immediately cease the use of the Intellectual Property in operations, in conducting new sales or in a manner that implies that OTCO certification is in effect. In the event of breach, Operator assumes full responsibility for the removal of its products containing the Intellectual Property from the market.

**19. NOTICES:** All notices and other communications under this Agreement must be in writing and shall be deemed to have been given if delivered personally, mailed by certified mail, emailed, or delivered by an overnight delivery service (with confirmation) to the parties to the legal registered addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other parties). Any notice or other communication shall be deemed to be given: (a) on the date of personal delivery, (b) at the expiration of the second day after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by overnight delivery service.

**20. AMENDMENTS:** OTCO may amend this Agreement, including these Terms & Conditions, from time to time upon Notice to Operator, with continuation of OTCO's services conditioned on Operator's agreement to and compliance with the Agreement as amended. Any such amendment shall be binding and effective thirty (30) calendar days after Notice to Operator unless Operator timely exercises its right to surrender and withdraw as provided in Section 18.1 prior to the expiration of the thirty (30) day notice period.

**21. ATTORNEY FEES AND COSTS:** In any formal action or proceeding commenced to enforce rights under this Agreement, the prevailing party will be entitled to recover documented and reasonable (a) costs and (b) attorneys' fees.

**22. GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Oregon, without regard to conflict-of-law principles.

**23. EXCLUSIVE JURISDICTION AND VENUE:** In any action or proceeding, including any arbitration (if arbitration is mutually agreed to by the parties), seeking to enforce any provision(s) of, or based on any right(s) arising out of, or related to or concerning this Agreement, the parties hereto consent to the exclusive jurisdiction of the courts of the State of Oregon and of any duly appointed arbitrator. In any such action or proceeding, venue shall lie exclusively in Benton County, Oregon, and in no other location. The parties further agree that in any such action or proceeding the parties shall appear for deposition at their own expense in Benton County, Oregon at such time as is either mutually agreed upon by the parties or ordered by the court.

**23. AUTHORIZATION:** By accepting the Agreement, Operator represents that it has read, understands and agrees to comply with the Agreement in its entirety, including these Terms & Conditions. Operator represents and acknowledges that the party executing the Agreement on behalf of Operator is duly authorized to bind Operator and that to the extent required, Operator has executed all consent resolutions or other corporate actions as may be necessary to duly authorize or ratify the execution of the Agreement.

**EXHIBIT A**

Registered Trademarks, Logos and Names of Oregon Tilth, Inc.:

- Oregon Tilth Certified Organic (word mark). Registration # 3019048
- OTCO (design mark). Registration #4596110
- Oregon Tilth (word mark). Registration #4694306
- Oregon Tilth (design mark). Registration #4710473