

**2022-23 TRADEMARK LICENSE AGREEMENT
COVER SHEET**

This Cover Sheet is attached to and forms part of the Trademark License Agreement (“Agreement”) between Red Tomato, Inc. (“Red Tomato”) and the Grower named below.

GENERAL AGREEMENT DETAILS	
<i>Effective Date of Agreement:</i>	August 30, 2022
<i>Initial Term:</i>	One year
<i>Grower:</i>	
<i>Grower Contact Person:</i>	
<i>Grower Address:</i>	

By signing below, the authorized representatives of the parties hereby execute this Trademark License Agreement.	
RED TOMATO, INC.	GROWER
Signed:	Signed:
Name: Susan Futrell	Name:
Title: Director of Marketing	Title:

TRADEMARK LICENSE AGREEMENT

This TRADEMARK LICENSE AGREEMENT (“**Agreement**”) is made by and between Red Tomato, Inc., a Rhode Island non-profit corporation having an address at 10 Sims Ave #102, Providence, RI 02909 (“**Red Tomato**”) and the entity or individual named on the attached Cover Sheet (“**Grower**”), on August 30, 2022 (“**Effective Date**”).

RECITALS

- A. Red Tomato is the owner of all right, title and interest in and to the trademarks identified on **Appendix A** hereto (collectively, the “**Licensed Marks**”); and
- B. Red Tomato desires to grant to Grower, and Grower wishes to obtain from Red Tomato, the right, privilege and license to use the Licensed Marks, subject to the terms and conditions herein set forth.

NOW THEREFORE, in consideration of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Red Tomato and Grower hereby agree as follows:

1. Grant of License.
 - 1.1 *Trademark License:* Subject to the terms and conditions of this Agreement, Red Tomato hereby grants to Grower a limited, non-exclusive license to use the Licensed Marks in connection with Grower’s advertising, marketing, promotion, sale and provision of the products corresponding to the Licensed Trademarks identified on **Appendix A**, all of which must conform to the certification and usage guidelines set forth in this Agreement (collectively, the “**Products**”).
 - 1.2 *Sub-Licenses:* Grower shall have no right to grant sub-licenses of the foregoing right, license and privilege.
 - 1.3 *Goodwill:* All use of the Licensed Marks by Grower shall inure to the benefit of Red Tomato.
 - 1.4 *Limitations:* The license granted herein allows use of the Licensed Marks only in connection with Products certified as set forth in Section 2.3 herein, and otherwise in accordance with the usage and advertising guidelines for the Licensed Marks (the “**Usage Guidelines**”) attached to this Agreement as **Appendix B** and as revised by Red Tomato and provided to Grower from time to time. Grower is not permitted to use the Licensed Marks other than in connection with the Products.
 - 1.5 *Adequate Remedy:* Grower acknowledges that any misuse or infringement of Red Tomato’s rights in the Licensed Marks may cause Red Tomato irreparable harm for which damages would not be an adequate remedy. Grower agrees that Red Tomato is entitled to obtain injunctive relief to restrain any such misuse or infringement.
2. Grower Representations and Preliminary Safety and Training.
 - 2.1 *Authority:* Grower represents and warrants to Red Tomato that it has full legal right, power and authority to enter into this Agreement, to perform all of its obligations hereunder and to consummate all of the transactions contemplated herein.
 - 2.2 *Compliance with Laws:* Grower is not in material violation of any laws, rules, or regulations which apply to the conduct of its business, its goods or services, or any facilities or property owned, leased, operated, or used by Grower.

- 2.3 *Certification:* Grower represents and warrants to Red Tomato that it has obtained, or will obtain prior to sale or provision of Products under this agreement, IPM Institute of North America, Inc. Eco Apple and/or Eco Stone Fruit certification, and otherwise complies with other food safety and quality measures as set forth in the Usage Guidelines. Within thirty (30) days of the Effective Date, and in any event prior to provision of Products under the Licensed Marks by Grower, Grower shall ensure that the certifier has provided to Red Tomato copies of certificates evidencing the required certification, and shall likewise ensure provision of such certificates within thirty (30) days of the Effective Date of each renewal term. **In no event is Grower permitted to provide Products under the Licensed Marks if it is not in compliance with this section.**

3. Term.

This Agreement shall take effect from the Effective Date and continue for one year, and may be renewed for subsequent one-year terms by mutual written agreement.

4. Use of Licensed Marks; Advertising; Quality Control

- 4.1 *Quality of Marketing:* Grower shall keep to the established prestige and goodwill of Red Tomato in selecting all of Grower's advertising and business materials, including without limitation signs, brochures, websites, advertisements, and point of sale advertising material (together "Marketing Materials") bearing the Licensed Marks. Grower shall use, employ, display and otherwise release Marketing Materials only in accordance with Red Tomato's Usage Guidelines and only with the prior written approval of Red Tomato.
- 4.2 *Quality of Products:* Grower shall maintain the high quality and safety standards of the Products sold in connection with the Licensed Marks as set forth in detail in the Usage Guidelines, and shall safeguard the established prestige and goodwill of the Licensed Marks, at the same level of prestige and goodwill as heretofore maintained. A failure of Grower to maintain the high quality and standards of the Products shall constitute an event of default under this Agreement.
- 4.3 *Right to Inspect and Require Compliance:* Red Tomato may inspect and review Grower's premises and Products during normal business hours and upon reasonable notice, to ensure compliance with the requirements set forth in this Agreement. In the event such audit or premises inspection reveals any non-compliance by Grower with respect to the quality requirements set forth in this Section 4, Red Tomato shall provide Grower with written notice thereof and Grower shall remedy such non-compliance within fifteen (15) days after notice thereof. Failure to remedy such non-compliance within such time period shall constitute an event of default under this Agreement.

5. Trademark Notice.

As relevant, Grower shall include the following trademark notices in all Marketing Materials:

"ECO CERTIFIED™ is a trademark of Red Tomato, Inc.

"ECO APPLE® is a registered trademark of Red Tomato, Inc."

"ECO PEACH™ is a trademark of Red Tomato, Inc.

Grower shall otherwise follow the trademark notice and marking requirements set forth in the Usage Guidelines.

6. Validity; Infringement; Maintenance of the Licensed Mark

- 6.1 *Warranty:* Red Tomato represents and warrants that: (a) Red Tomato is the owner of all rights, title and interest in and to the Licensed Marks, and any and all forms or embodiments thereof in the United States, in connection with the Products identified herein; and (b) to Red Tomato's actual knowledge, Red Tomato has the right to grant to Grower the license granted by this Agreement. EXCEPT FOR THE FOREGOING WARRANTIES, RED TOMATO DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND ANY AND ALL IMPLIED WARRANTIES.
- 6.2 *Notice of Infringement; Enforcement:* Grower shall use reasonable efforts to notify Red Tomato of any infringement of the Licensed Marks, by third parties, or any act of unfair competition by third parties relating to the Licensed Marks ("Infringements"), promptly after such Infringements shall come to Grower's attention. Red Tomato shall have the power to take legal or other action, at Red Tomato's sole option and expense, before any court or governmental authority with respect to any Infringement or the protection of the Licensed Marks, and Grower hereby consents to being named as a party to any such legal action to the extent that Red Tomato cannot take such action in its name alone. Any financial benefits resulting from any such action shall be paid to, or retained by, Red Tomato. Grower shall have no right to take any action alleging infringement by a third party of rights in the Licensed Marks, nor any other action in connection with maintenance or enforcement of rights in the Licensed Marks, without Red Tomato's prior written consent. The parties acknowledge that it is in both their interests to protect and maintain the Licensed Marks, and the parties agree to cooperate in good faith in furtherance of that goal.
- 6.3 *No Challenge or Competing Use:* Grower shall not (a) assert rights in the Licensed Marks, or challenge the distinctiveness of Licensed Marks, the validity of Red Tomato's ownership of the Licensed Marks, or any application for registration thereof, or any trademark registrations thereof in any jurisdiction; (b) take any action that could in any way diminish, alter or adversely affect Red Tomato's rights in the Licensed Marks; (c) use, adopt, apply to register or register the Licensed Marks or any trade name, corporate name, business name, trademark, service mark, domain name, social networking user name, or logo that is confusingly similar to the Licensed Marks, without Red Tomato's prior written consent; (d) use the Licensed Marks or a confusingly similar term in connection with a website, including a social networking website, except as permitted under the Usage Guidelines, or (e) contest the fact that Grower's rights under this Agreement (i) are solely those of a licensee, and (ii) terminate upon termination of this Agreement.
7. Indemnities and Limited Liability
- 7.1 *Indemnity:* Grower shall indemnify, defend and hold Red Tomato harmless from and against any judgments awarded or settlement amounts agreed arising from any claims related to the Products, and any attorneys' fees incurred in connection with such claims, including but not limited to claims related to the quality or safety of the Products.
- 7.2 EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES: EXCEPT FOR LIABILITY ARISING PURSUANT TO INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 7, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR DAMAGES FOR LOSS OF PROFITS, OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE LICENSED MARK OR RELATING TO THIS AGREEMENT, WHETHER SUCH DAMAGES ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND EVEN IF SUCH PARTY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.
8. Events of Default; Termination.

- 8.1 Either party may terminate this Agreement for any reason upon thirty (30) days' written notice to the other party.
- 8.2 Each of the following shall constitute an event of default under this Agreement:
 - (a) If Grower shall fail to perform any material term, condition, agreement or covenant in this Agreement and fails to cure such non-performance within fifteen (15) days after notice thereof by Red Tomato;
 - (b) If Red Tomato or Grower is adjudged bankrupt or institutes proceedings seeking relief under the bankruptcy laws of any jurisdiction or any similar law
- 8.3 In the event that Grower is deemed to have committed fraud during the certification process or otherwise violated the certification protocols of the IPM Institute of North America, Inc., Red Tomato shall have the right to terminate this Agreement effective immediately.
- 8.4 In the event that the Products are deemed defective due to a critical food safety issue, Red Tomato shall have the right to terminate this Agreement effective immediately.
- 8.5 If any event of default shall occur pursuant to the provisions of paragraph 8.2 hereof, the non-defaulting party may, in its sole discretion, terminate this Agreement by written notice to the other party without penalty. Termination shall be effective upon receipt of such notice. No assignee for the benefit of creditors, receiver, trustee in bankruptcy, sheriff, or any other officer of the court or official charged with taking over custody of Grower's assets or business, shall have any right to continue performance of this Agreement.

9. Notices.

All notices required or permitted to be given under this Agreement shall be giving in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, or (d) by email. Such notices shall be addressed as follows:

If to Red Tomato:	Red Tomato, Inc. 10 Sims Ave. #102 Providence, RI 02909 Attention: Susan Futrell Email: sfutrell@redtomato.org
If to Grower:	[Company] [Address] [Address] [Address] Attention: [Contact] Email: [Email address]

10. General.

- 10.1 *Assignment by Grower:* This Agreement shall not be assigned or transferred by Grower without Red Tomato's prior written consent.

- 10.2 *Assignment by Red Tomato:* The rights and obligations of Red Tomato under this Agreement may be assigned by Red Tomato to any third party with the right to grant the license granted herein, including but not limited to (a) in the event that Red Tomato undergoes any merger or business combination, to the surviving entity of any such merger or business combination; (b) in the event that all or substantially all of the assets of Red Tomato are sold, to the purchaser of such assets; and (c) to an affiliate of Red Tomato.
- 10.3 *Amendment:* This Agreement may be amended by a writing signed by both parties, except that the Usage Guidelines may be amended unilaterally by Red Tomato and the new version thereof shall become effective sixty (60) days after written notice to Grower.
- 10.4 *Governing Law:* This Agreement shall be construed by and interpreted and enforced in accordance with the laws of the State of Rhode Island without regard to principles of conflict of laws
- 10.5 *Severability:* If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties. The parties further agree to replace any such invalid or unenforceable provisions with valid and enforceable provisions designed to achieve, to the extent possible, the business purposes and intent of such invalid or unenforceable provisions.
- 10.6 *Waiver:* No waiver by any party of a breach of any covenant or condition of this Agreement by any other party shall be construed to be a waiver of any succeeding breach of the same or any other covenant or condition. This Agreement may not be changed or amended except by a writing expressly referring to this Agreement signed by the parties.
- 10.7 *Entire Agreement:* This Agreement, including the attached Usage Guidelines, sets forth the entire agreement of the parties concerning the subject matter hereof, and supersedes all prior agreements, arrangements or understandings, written or oral, concerning such subject matter.
- 10.8 *Independent Contractors:* Red Tomato and Grower are independent contractors and are not principal and agent, partners, or joint venturers.
- 10.9 *Execution:* This Agreement may be executed in electronic (pdf) format, and in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

Appendix A

LICENSED MARKS

[List all licensed marks, including logo variants, along with relevant goods]

Mark	Products
ECO APPLE®	Fresh apples
ECO PEACH™	Fresh peaches
ECOCERTIFIED™	Fresh fruits and vegetables

Appendix B

Advertising, Usage, and Certification Guidelines for Licensed Marks

Red Tomato and Eco Brand Usage Guidelines

Red Tomato® and Eco Apple® (logo and name) are registered trademarks, and may be used only with permission from Red Tomato. EcoCertified™ Eco Peach™ and Eco Stone Fruit™ are trademarks and branded programs developed by Red Tomato and may be used only with permission. Use of any of our trademarks on packaging and advertising materials must be approved in advance by either Special Projects Director (Sue Futrell) or Design/Packaging Director (Diane Rast) at Red Tomato so that we can maintain brand consistency and integrity on behalf of the whole network.

EcoCertified™, Eco Apple®, Eco Peach™, Eco Stone Fruit™: These are trademarks owned by Red Tomato which identify programs developed in partnership with the IPM Institute of North America and our grower network, as well as products sold under those programs. Product may be sold under these trademarks with permission and subject to an appropriate written license, when the current year's protocol has been followed, production records have been submitted, and the orchard/farm has been certified by IPM Institute. Produce grown outside the protocols or not accepted for certification may not be sold under the EcoCertified™, Eco Apple®, Eco Peach™ or Eco Stone Fruit™ label, although it may still be marketed by Red Tomato as a conventional product.

Processed products: Some processed goods made with certified fruit may also carry the EcoCertified™ Eco Apple®, Eco Peach™ or Eco Stone Fruit™ designation on the packaging, but is subject to a separate licensing agreement. We are happy to provide you with those guidelines, logo artwork (see additional guidelines below) and help with wording and placement. All uses of the Eco brand logos and designation must be approved in advance by Red Tomato.

We have a few specifications for you to follow:

- a) EcoCertified™ logo:

EcoCertified™ logo: cannot be altered or manipulated and can be used in 2 versions:

1. 5 color: PMS 348 ["ec" and tagline] / PMS 1797 [o] / PMS 375 [leaf] / PMS 478 [soil] / White or output in CMYK.
2. If it is reduced to smaller than 1 inch, please do not include the tagline, "Local Done Right." In all other instances, the full logo+tagline must be used. If you use the black version only, the leaf and 1st layer of ground is at 50% black to provide some dimension. The logo cannot be used as black only.

We can provide the logo in color, black +tint only, and with and without the tagline if you need that.

Eco Apple® or Eco Peach™ logo (old versions): cannot be altered or manipulated and can be used in 2 versions: 2 color (Black and PMS 363) or output in CMYK. The ® or ™ must accompany the logo at all times.

- b) If there is any reference in your text that uses Eco Certified™, Eco Apple®, Eco Peach™, or Eco Stone Fruit™ it must be:
- a. followed by the ® registered trademark symbol or ™ unregistered trademark symbol as appropriate,
 - b. must be used as a “proper adjective” only, not as a noun,
 - c. followed by an appropriate generic term, such as “fruit” or “apples,” and
 - d. never be used in its plural form. An example of proper use is (“We sell EcoCertified™ apples,” or “We sell Eco Apple® fruit.” Examples of improper use include “We sell Eco Apples” and “Enjoy an Eco Apple today.”

If you have any questions regarding proper use of EcoCertified™, or any of our trademarks, please contact our Marketing Department.

Please supply our marketing department a sample (digital or print) of what you have created for review, prior to publication or circulation.

Website, signs, brochures: We offer some print materials and signs for you to use, (see list below.) In some cases we can customize these to incorporate your farm logo or information such as recipes; contact Red Tomato if you'd like to know more. You are welcome and encouraged to include EcoCertified™ information in your own website, signs and materials, subject to these guidelines. Please be extremely careful to indicate the current year for which your farm is certified, and if the certification does not apply to your entire crop, to clearly identify which product is certified and which is not. If you have been certified in past years but are not certified currently it is essential that you make that clear, and remove or update all references to your certification and participation in the program. Description of the Eco programs and use of the logo on packaging and print material must be approved by either Special Projects Director (Futrell) or Design/Packaging Director (Rast) at Red Tomato so that we can maintain brand consistency and integrity on behalf of the whole network.

Keep us posted! Let us know about all of the marketing you are doing—your website, Facebook, events, products other than the ones Red Tomato is marketing. We will gladly put links on our website, and help to promote your farm and products through our Facebook and Twitter, our e-newsletter, and whenever we have the opportunity.

Note:

Red Tomato® brand: In general, the Red Tomato® brand is not used by anyone other than Red Tomato, and is used to identify products, educational material, events, and programs. Our goal is to build brand recognition and credibility. If you would like to use

the Red Tomato® trademark on a product or activity you are working on, start by contacting Red Tomato Marketing and we will help determine how to proceed.

Red Tomato® logo: cannot be altered or manipulated and can be used in 2 versions: 3 color (Black, PMS 032 and PMS 363) or output in CMYK. If it is reduced to smaller than 1 inch, please do not reproduce the tagline, "Righteous Produce." We offer the logo in color, black only and either version without the tagline.