



CUSTOMER LICENSE AGREEMENT

This License Agreement (“Agreement”), effective _____, 2007, (“Effective Date”) is made by and between YottaMark, Inc, a Delaware corporation having its principal place of business at 203 Redwood Shores Parkway, Suite 620, Redwood City, CA 94065 (“YottaMark”), and _____, having its principal place of business at _____ (“Customer”). YottaMark and Customer may hereinafter be referred to each as a “Party” and collectively as the “Parties.”

RECITALS

YottaMark has developed certain proprietary unit-level authentication and traceability technology, solutions, and services (“YottaMark Authentication Platform” or “Platform”) that it licenses, sells, and operates, under the YottaMark™ brand or under related product brands such as HarvestMark™, and Customer wishes to license certain aspects of the Platform from YottaMark. Customer will purchase Codes and optionally other Available Features from a YottaMark Reseller, and may purchase Available Features directly from YottaMark.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, it is agreed as follows:

1. DEFINITIONS

- 1.1. “Attributing” is the process of associating required and optional meta-data, such as ranch number, production line, or production / harvest date, with one or more Codes.
- 1.2. “Authenticate” means presenting a Code to a YottaMark online service through a YottaMark web page, an SMS message, or a Custom Landing Page and receiving a Response Page, or receiving an indication that the Code is not valid or may be associated with fraud or counterfeiting.
- 1.3. “Authorized Products” are those Products produced by Customer that have been enabled in the YottaMark system.
- 1.4. “Available Features” are those traceability, anti-counterfeiting, anti-diversion, and marketing program features associated with one or more Codes as described in the YottaMark Authentication Platform Descriptions, which are available at <http://www.yottamark.com/customerportal> (the Portal”).
- 1.5. “Basic Code Administration” is the set of administration functions available to Customer as part of this Agreement which perform, among other basic tasks, a) defining the data for Authorized Products that will be associated with Codes, b) viewing information about Purchased Codes, c) viewing the data associated with Purchased Codes, d) scraping Purchased Codes, e) setting up and changing administration and user accounts. These functions may be performed through a web interface, by email, or by phone with YottaMark as determined by YottaMark.
- 1.6. “Basic Reporting” is the set of web-based reporting features available to a Customer as defined in the YottaMark Authentication Platform Descriptions, available on the Portal.
- 1.7. “Batch” is a particular grouping of Codes issued as part of a single request.
- 1.8. “Code” is defined as an encrypted, non-sequential, non-repeating numeric or alphanumeric code generated using the proprietary YottaMark coding algorithm that is placed on Products in machine-and/or human-readable form, either overtly or covertly, for use in identifying Product units, either alone, or in cases, boxes, pallets or some other aggregation.
- 1.9. “Custom Landing Page” is defined as a Customer branded web page, or custom web applet, hosted or provided by YottaMark, that offers the user of the page the ability to Authenticate a Code, and optionally make use of other Purchased Features associated with the entered Code.
- 1.10. “Product” is a defined set of related goods, typically associated with a single SKU, such as a particular fresh produce product, a particular model of heart monitor, or a particular ink cartridge, where units of the Product will be identified using Codes.
- 1.11. “Purchased Codes” are Codes that have been ordered and delivered through an authorized reseller.
- 1.12. “Purchased Features” are those features purchased by a Customer associated with a given Code. Purchased Features can be ordered for all Purchased Codes, or for one or more consecutive Batches of Codes. The Purchased Features can be changed after a code is initially issued through Basic Code Administration.

- 1.13. “Requesting and Receiving Codes” (“Request and Receive Codes”) is the process of Customer requesting a Batch associated with a defined Authorized Product using an authorized reseller. The new Batch is returned according to the technical interface (text file, XML file, programmatic interface, etc.) defined between YottaMark and the Customer.
- 1.14. “Response Page” is defined as a web page that is presented when a user Authenticates a Code. The Response Page content is defined by the Purchased Features associated with the Code, and may include Product unit-level data that was Attributed to the Code, marketing programs such as surveys, alerts, and other information. A Response Page may carry YottaMark branding or Customer branding, depending on the Purchased Features.
- 1.15. “SLA” means YottaMark’s service level agreement which sets for the terms and conditions of support provided to Customers agreeing to a minimum service period of one year or more, and is available at the Portal.
- 1.16. “Trademarks” mean one or more of the trademarks, trade names, copyrights, and service marks associated with the YottaMark Authentication Platform, the YottaMark brand, or any other related brand such as HarvestMark.
- 1.17. “TUG” means YottaMark’s Trademark Usage Guidelines, which set out the Trademarks and the policies and procedures for Customer use of the Trademarks. The TUG is available at the Portal.

2. TERM AND TERMINATION

- 2.1. Term. The term of this Agreement will commence on the Effective Date and continue in full force and effect for 12 months thereafter, with two automatic renewal terms of one year each, and thereafter if mutually extended by the Parties. Each 12 month period shall hereinafter be referred to as a “Term”. Either Party may terminate this Agreement by serving notice to the other Party no less than thirty (30) and not more than sixty (60) days prior to the end of a Term.
- 2.2. Termination. Either Party shall have the right to terminate this Agreement upon written notice to the other Party if the other Party breaches any material term of this Agreement and fails to cure such breach following thirty (30) days’ written notice regarding such breach. This Agreement may also be terminated by the mutual written consent of both Parties.
- 2.3. Effect of Termination or Expiration. If this Agreement expires, or is terminated pursuant to Section 2.2, Customer shall return to YottaMark all Confidential Information pursuant to Section 4. Customer shall also immediately pay to YottaMark all amounts then owed to YottaMark, and each Party shall further have all rights available to such Party in law and equity. Neither Party shall incur any liability

whatsoever for any damage, loss or expense of any kind suffered or incurred by the other arising from or incident to any termination or expiration of this Agreement which complies with the terms of this Agreement. Without limiting the foregoing, neither Party shall be entitled to any damages on account of prospective profits or anticipated sales. Customer hereby waives the benefit of any law or regulation providing compensation to Customer arising from the termination or expiration of this Agreement. Customer hereby represents and warrants that such waiver is irrevocable and enforceable by YottaMark.

3. LICENSED SERVICES

Subject to the terms of this Agreement, YottaMark hereby grants Customer a fee-bearing, term-limited, right to:

- a. Request and Receive Codes for application to Authorized Products. Codes shall be purchased through an authorized reseller, unless specifically agreed to by the Parties. Requesting and Receiving Codes may be performed by an authorized reseller on behalf of Customer.
- b. Apply Purchased Codes, by means of personalizing the packaging, labels, or actual product, only to those Authorized Products for which they were requested. Applying Purchased Codes may be performed by an authorized reseller or a sub-contractor to Customer.
- c. Attribute Data with and to Purchased Codes.
- d. Perform Basic Code Administration.
- e. Receive Basic Reports.

The above may hereinafter be referred to each or collectively as “Licensed Services.”

4. **CONFIDENTIALITY.** The term “Confidential Information” shall mean any information disclosed by a party (the “Disclosing Party”) to the other Party (the “Receiving Party”) in connection with this Agreement that is disclosed in writing, orally or by inspection and is identified as “Confidential” or “Proprietary.” The Parties agree that any data collected or reports produced using YottaMark Authentication Platform shall constitute Confidential Information of YottaMark, except that which may be publicly viewed on Response Pages. The Parties further agree that the technology, algorithms, and business model of the Platform are Confidential Information of YottaMark. The Receiving Party will only disclose Confidential Information to those of its employees and contractors who have a need to know for the purpose of performing under this Agreement. The Receiving Party will protect the confidentiality of Confidential Information using the same degree of care, but no less than reasonable care, as the Receiving Party uses to protect its own confidential or proprietary information. The obligations set forth in this Section 4 will not apply to any portion of the Confidential Information that: (a) was independently developed by the Receiving Party without any use of the Confidential Information

of the Disclosing Party and by employees or other agents of (or independent contractors hired by) the Receiving Party who have not been exposed to the Confidential Information; (b) becomes known to the Receiving Party, without restriction, from a third party without breach of this Agreement who had a right to disclose it; (c) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; (d) was rightfully known to the Receiving Party, without restriction, at the time of disclosure; or (e) is disclosed pursuant to any law or the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Receiving Party shall provide prompt notice thereof to the Disclosing Party and shall use its reasonable best efforts to obtain a protective order or otherwise prevent public disclosure of such information.

5. CUSTOMER BUSINESS PROCESS

- 5.1. Customer Setup. Upon execution of this Agreement and receipt of a New Customer Setup Form provided by the Reseller on behalf of Customer or Customer directly, YottaMark will create a new account in its system for Customer and each Authorized Product, provide Customer with the associated account login information, and invoice for any applicable Customer Setup Fee due directly to YottaMark as defined in Section 6.1. The New Customer Setup form can be found on the Portal.
- 5.2. Customer Account. Once the Customer Setup is complete, Customer can begin Requesting and Receiving Codes.
- 5.3. Licensed Services. Once the account has been established, Customer may begin to Attribute data with Purchased Codes, perform Basic Code Administration, receive Basic Reports, and use other Purchased Features as defined and authorized in this Agreement. Customer may, from time to time purchase, additional Available Features for Purchased Codes or cancel Purchased Features. YottaMark will invoice Customer for all Purchased Features according to the terms of this Agreement.
- 5.4. Online Services. All Purchased Codes can be Authenticated during the term of this Agreement. The verify.yottamark.com website and other YottaMark product websites, such as the HarvestMark.com website, will be available according to the service level agreement set forth in the SLA on the Portal. When requested by Reseller on behalf of Customer, or directly by Customer, YottaMark will create a Custom Landing Page to Authenticate Purchased Codes. YottaMark will invoice Customer or Reseller according to the fees associated with creating and hosting a Custom Landing Page. Some Purchased Features may require the creation of a Custom Landing Page as described in the YottaMark Authentication Platform Descriptions available on the Portal.

6. BUSINESS TERMS

- 6.1. Pricing. In the event that Customer wishes to buy Additional Features directly from YottaMark, YottaMark will provide the Customer a detailed quotation upon request.
- 6.2. Platform Changes. YottaMark may, subject to compliance with all applicable laws and in its sole discretion, without incurring any liability to Customer, change the features of, or discontinue the license or sale of any aspect of the YottaMark Authentication Platform provided hereunder. YottaMark shall use commercially reasonable methods to notify Customer in advance of any such changes, but Customer understands and agrees that YottaMark cannot and does not make any warranty in regards to advance notice of any such changes in the Platform. YottaMark discontinuances will comply with all relevant legal end-of-life requirements, if any.

7. TRADEMARKS

- 7.1. YottaMark grants to Customer, subject to the terms and conditions herein, a limited, non-exclusive, nontransferable, royalty-free license to reproduce in printed marketing material, display on corporate and Product web sites, and reproduce on Authorized Product packaging one or more Trademarks. The specific Trademark(s) licensed herein are strictly dependent upon the YottaMark's vertical solutions such as HarvestMark of which the Customer is using. YottaMark hereby reserves any and all rights not expressly and explicitly granted in this Agreement.
- 7.2. Customer agrees that it will not use any trademark or brand name other than Trademarks on or in connection with any promotion of Customer's use of YottaMark products and services, Purchased Codes or Purchased Features.
- 7.3. YottaMark shall have the right at all reasonable times to inspect and examine the Customer's use of Trademarks, including printed marketing material, corporate and product web sites, and product packaging and labels. In the event that Customer's use of the Trademark does not meet the reasonable requirements of YottaMark, Customer shall use its best efforts to correct such issues.
- 7.4. Customer agrees that, on each label, tag, Product or material bearing the Trademarks, the Trademarks shall be conspicuously displayed, marked with the registration symbol ® or ™, as applicable, and excluding labels and tags where the small size is prohibitive, the material shall contain a footnote as required in the TUG.
- 7.5. Customer acknowledges YottaMark's exclusive ownership of all right, title and interest in and to the Trademarks, that the Trademarks are a valuable asset to YottaMark, and agrees that Customer's use of the Trademarks shall inure to the benefit of YottaMark.

Customer further agrees that it will in no way dispute, impugn or attack the validity of the Trademarks or YottaMark's rights thereto. Customer recognizes that there exists great value and good will associated with the YottaMark's Trademarks, and acknowledges that the Trademarks and all rights therein and goodwill pertaining thereto belong exclusively to YottaMark.

- 7.6. The term of this Trademark license is identical to and coincident with the term of this Agreement. A breach of or default under this license by Customer shall be deemed a breach or default of the Agreement. On termination of this Agreement or any portion thereof in any manner provided herein, Customer will destroy all signs, displays or other identifications, packaging, or advertising material, supplies and documents, and any other materials bearing the Trademark, and will certify to YottaMark in writing that it has done so, provided, that Customer may sell or distribute Purchased Codes containing the Trademarks, but only in the event that this Agreement was not terminated as a result of breach by Customer.
- 7.7. If, at any time, Customer should use the Trademarks in a manner not specifically set forth herein, or if, at any time, Customer breaches any other provision of this Agreement, or fails to observe any of its obligations hereunder, the license granted herein shall terminate thirty (30) days after receipt of written notice from YottaMark to that effect, provided that Customer has not cured any breach or default to the satisfaction of YottaMark by the end of such thirty (30) day period.
- 7.8. Customer agrees to notify YottaMark immediately of any apparent infringement of any Trademark. YottaMark shall take such action regarding such infringement as it deems, in its sole discretion, to be necessary or desirable, and Customer agrees to cooperate therein, at YottaMark's option and expense.
- 7.9. YottaMark shall be solely responsible to clear for use, file, prosecute, register, and maintain the Trademark registration(s).
- 7.10. In the event that Customer should provide notice to YottaMark that it has received written or other notice that its use of the Trademarks is alleged to infringe the trademark right of a third party, YottaMark may in its sole discretion: (i) provide written waiver of the obligation to use the Trademark, and provide an acceptable substitute and reimburse Customer for all expenses for reprinting all Trademark materials; or (ii) assume the defense and indemnify and hold harmless Customer against monetary damages arising from infringement of such claimed third-party trademark rights, but only insofar as such infringement claim arises solely from Customer's use of the Trademarks licensed hereunder; or (iii) discontinue use of the Trademarks. YottaMark has the right to decide at its sole discretion what legal proceedings or other action,

if any, shall be taken, by whom, how such proceedings or other action shall be conducted, and in whose name such proceedings or other action shall be performed. Any legal proceedings instituted pursuant to this Section shall be for the sole benefit of YottaMark and all sums recovered in such proceedings, whether by judgment, settlement, or otherwise, shall be retained solely and exclusively by YottaMark.

- 7.11. YottaMark shall provide Customer with digital files or camera-ready artwork containing the Trademark brand logos. Customer's use of the Trademarks must be in material compliance with the TUG located on the Portal.
- 7.12. This limited grant of a Trademark license does not extend beyond the required reproduction for Customer's use in Product packaging and in promotional materials that are directly related to Authorized Products. Customer and its agents will exercise care that there be no misrepresentation or confusion with respect to the ownership of Trademarks (including, but not limited to, the HarvestMark™ brand).
- 7.13. Customer shall not register or attempt to register the Trademarks or any similar mark or name licensed hereunder. Customer will cooperate and assist YottaMark, at YottaMark's option and expense, to apply for, prosecute, register and renew the Trademarks with any governmental authority. Nothing in this Agreement shall be construed as restricting YottaMark from using, licensing, or registering the Trademarks in connection with any goods or services anywhere throughout the world.
- 7.14. In the event that YottaMark alters its Trademark or makes any other changes in the TUG, Customer shall have the opportunity to continue to sell, promote, and distribute any existing Codes. However, Customer shall ensure that any new production or manufacture of labels or packaging shall incorporate such changes as directed by YottaMark.

8. PROPRIETARY RIGHTS

- 8.1. YottaMark shall retain sole and exclusive ownership of all right, title and interest in and to the YottaMark Authentication Platform and its associated solutions such as HarvestMark, including any and all intellectual property rights associated therewith. Customer acknowledges that these products and services of YottaMark contain valuable trade secret information and other intellectual property of YottaMark. Customer agrees that it will not, and will not authorize others to, reverse compile, reverse assemble, reverse engineer or otherwise attempt to create or obtain the source code or algorithms of any YottaMark product or services. Customer agrees that it will not, and will not authorize others to, remove or modify any copyright, patent or other proprietary

labels or markings any YottaMark product or the packaging provided by YottaMark.

- 8.2. Customer grants to YottaMark the right to display on the YottaMark website, Custom Landing Pages, Response Pages and any other media Attributed to the Products, and to reproduce in printed marketing and sales materials the Customer's trademarks associated with Authorized Products. YottaMark agrees to abide by similar marking requirements as set forth above for Customer.
- 8.3. Customer grants to YottaMark the right to copy, use, or display all images and text Customer provides to YottaMark in the process of defining Products in the YottaMark Authentication Platform or in the process of Attributing Data with Codes. Customer further grants to YottaMark the right to display on the YottaMark websites, Custom Landing Pages, and Response Pages Customer's trademarks listed in the **Exhibit A**.

9. **LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO ANY BREACH OF SECTION 4 OR FOR AMOUNTS PAYABLE TO THIRD PARTIES UNDER THE INDEMNITY PROVISION IN SECTION 7.10, THE LIABILITY OF YOTTAMARK AND ITS SUBCONTRACTORS TO CUSTOMER AND ITS EMPLOYEES FOR CLAIMS RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREIN, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER. YOTTAMARK SPECIFICALLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT WITH RESPECT TO THIS AGREEMENT, THE PLATFORM, AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING. IN NO EVENT WILL YOTTAMARK OR ITS SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, EVEN IF YOTTAMARK HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL YOTTAMARK OR ITS SUBCONTRACTORS BE LIABLE FOR ANY DAMAGE TO CUSTOMER'S EQUIPMENT OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

10. GENERAL

- 10.1. **Assignment.** This Agreement may not be assigned by Customer without the express prior written consent of YottaMark, which consent shall not be unreasonably

withheld. Notwithstanding the foregoing, Customer or YottaMark may assign this Agreement to a third party in the course of a merger, acquisition or reorganization by or of Customer or YottaMark, respectively, upon written notice to the other Party. Any attempted assignment by Customer in derogation of the foregoing shall be void. This Agreement shall inure to the benefit of each party and its successors and permitted assigns.

- 10.2. **Notices.** Any notices required or permitted to be given to either Party hereunder shall be deemed properly given when delivered by certified mail (return receipt requested), hand delivery, or certified overnight delivery such as Federal Express, and directed to such Party at the address appearing in the first paragraph of this Agreement. Either Party may change its address for purposes of this Section 10.2 upon delivery of written notice of such change to the other Party.
- 10.3. **Severability and Headings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid under any applicable statute, rule or law, such invalidity shall not affect the validity of the remaining provisions, and the Parties agree to substitute a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Headings used in this Agreement are provided for convenience only, and shall not in any way affect the meaning or interpretation hereof.
- 10.4. **Waiver.** No waiver of any right by either Party under this Agreement shall be of any effect unless such waiver is express, in writing and signed by the waiving Party. Any purported waiver not consistent with the foregoing shall be void.
- 10.5. **Force Majeure.** Each Party's failure to perform its obligations hereunder, except any obligation to pay money, shall be excused to the extent and for the period such performance is prevented by fire, flood, earthquake, acts of God, explosion, casualty of war, labor dispute, inability to obtain delivery of parts, failure of supplies of electrical power, violence, any governmental law, order, regulation or ordinance, or any other act or condition beyond the reasonable control of such Party. In such case, the Party so affected shall give prompt, written notice to the other Party, and shall resume performance promptly once the foregoing condition has abated.
- 10.6. **Relationship of the Parties.** The Parties understand and agree that their relationship hereunder is one of contract, and that they are not and shall not be construed as partners, joint ventures, or agent and principal. In no event shall either Party be authorized to act for or on behalf of the other Party.
- 10.7. **Survival.** If this Agreement expires or is terminated, the provisions of Sections 1, 2.3, 4, 9, and 10, and the

indemnity provision contained in Section 7.10 shall survive and shall continue to bind the Parties.

10.8. Choice of Law and Jurisdiction. Any dispute arising under this Agreement shall be subject to the laws of the State of California and the United States, without regard to its principles of conflicts of laws. The state and federal courts located in Santa Clara County, California, shall have sole and exclusive jurisdiction over any dispute arising hereunder and the Parties hereby submit to the jurisdiction thereof.

10.9. Attorneys' Fees. In the event of any dispute between the Parties, the prevailing Party in any action based upon the dispute shall be entitled to its reasonable attorneys' fees and costs associated with such action.

10.10. Amendment. This Agreement may be amended only in writing, signed by both Parties. Any purported oral modification hereof shall be void.

10.11. Entire Agreement. This Agreement, including all exhibits and attachment, is the entire agreement between the Parties with respect to this subject matter, and supersedes all prior and contemporaneous discussions, communications and agreements with respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement between the parties to be executed by their respective authorized representatives.

YOTTAMARK

CUSTOMER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

EXHIBIT A

Customers Trademarks

To be filled in by Customer . . .