



**BERKS AGRICULTURAL
RESOURCE NETWORK**

Framework for the Farm & Food Industries

1238 County Road, Suite 110, Leesport, PA 19533-9709 Phone: 610-898-5482 Fax: 610-378-7961 www.co.berks.pa.us

**Bountiful Berks™ Partnership
Trademark License Agreement**



THIS TRADEMARK LICENSE AGREEMENT (this “Agreement”) is entered into this ____ day of _____, 20__ by and between the BERKS AGRICULTURAL RESOURCE NETWORK, a Pennsylvania non-profit corporation with an office at 1238 County Welfare Road, Suite 110, Leesport, Pennsylvania 19533 (Licensor), and _____, a Pennsylvania _____ with its principal offices at _____, Pennsylvania, _____ (“Licensee”).

WITNESSETH

WHEREAS, Licensor has trademarked “Bountiful Berks,” as more fully described in Exhibit “A”, attached hereto (the “Trademark”); and

WHEREAS, Licensee desire to use, and Licensor desires to license Licensee’s use of, the Trademark to identify itself and/or certain of its products as grown, raised or processed in Berks County, Pennsylvania, subject to the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

AGREEMENT

1. Grant of License. Licensor hereby grants to Licensee a non-exclusive, non-assignable, non-transferable, statewide license to use the Trademark, subject to the terms and conditions set forth herein.

2. Trademark Purpose. Licensee understands and acknowledges that the purpose of the Trademark is to encourage Berks County individuals and businesses to purchase food and agricultural products grown, raised, produced and/or processed in Berks County by identifying food and agricultural products that meet the criteria set forth in Exhibit "B", attached hereto. Licensee understands that the rights granted by this Agreement are for the sole purpose stated above and that any other use of the Trademark by Licensee is prohibited and shall constitute a material breach of this Agreement.

3. Term. The term of this Agreement shall begin on the date first written above and shall continue for one (1) year, unless or until terminated in accordance with its terms. Unless and until terminated as set forth herein, this Agreement shall automatically renew for additional consecutive one (1) year periods.

4. License Restrictions. Licensee may use the Trademark only upon the products identified in Exhibit "B", and subject to the qualification requirements set forth therein. If Licensee, as an entity, or any of its products shall qualify under Exhibit "B" to receive the Trademark, such qualification shall be conditioned upon Licensee's continued compliance with the qualification standards set forth in Exhibit "B".

5. Licensee Covenants.

a. Licensee shall not use, register or apply to register any mark or name identical to or confusingly similar to the Trademark. Licensee shall not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of the Trademark except under the terms of this Agreement. Licensee agrees not to do or permit to be done any act which would or might jeopardize or invalidate the Trademark and will not object to or otherwise contest Licensor's exclusive right, title and interest in and to or the validity of the Trademark.

b. In the event Licensee is found to be in violation of this Agreement, including, without limitation, by failing to maintain the qualification of any product under Exhibit "B", or any other applicable governmental law, regulation, policy, mandate or directive, Licensee shall immediately cease using the Trademark on such product(s) and shall inform Licensor of such violation. After such violation as aforementioned, Licensee shall not use the Trademark until Licensor determines, in its sole and unfettered determination, that Licensee is in compliance with this Agreement and all applicable governmental laws, regulations, policies, mandates and directives.

c. Licensee shall use its best efforts to ensure compliance with the terms of this Agreement and shall make available to Licensor or its designee for

inspection upon reasonable notice, its books, records, literature, brochures, data books, data sheets, web site mentions, advertising produced, distributed, sold or displayed by or on behalf of the Licensee, or any other information reasonably necessary to satisfy Licensor of Licensee's compliance with this Agreement.

d. Licensee shall immediately notify Licensor in writing if Licensee becomes aware of any unauthorized use, or proposed unauthorized use, by any third party of the Trademark.

e. Licensee agrees, at its sole expense, to defend, indemnify and hold harmless Licensor, its directors, officers, members, representatives and agents from and against all third party claims, demands, causes of action and judgments (including attorney's fees, court costs, and expert fees) arising out of or resulting from Licensee's misuse of the Trademark or any other act or omission by Licensee that constitutes a violation of this Agreement.

6. No Warranties. The Trademark is provided to Licensee "AS IS" and without warranty of any type or kind. LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS. Licensor does not guarantee, promise or make any representation to Licensee concerning whether Licensee will experience any benefit whatsoever from its use of the Trademark, including, without limitation, increased sales.

7. Ownership of the Trademark. The execution of, and any performance under, this Agreement shall not be construed as a release, diminution, or surrender of any right of the Licensor to enforce its right with respect to the Trademark against third parties. All ownership rights in and to the Trademark shall continue to reside exclusively with Licensor, and Licensee's use of the Trademark pursuant to this Agreement shall accrue to the benefit of Licensor's rights in and to the Trademark.

8. Use of Licensee's Logo. Licensee hereby grants Licensor the right to identify Licensee as a Berks County entity with some or all of its products qualified to use the Trademark, including, without limitation, by using Licensee's company name or logo on Licensor's website and on any promotional materials associated with the Trademark.

9. Termination.

a. Licensor may terminate this Agreement and the license granted hereunder:

i. If, in Licensor's sole and unfettered determination, Licensor determines that Licensee is in default of this Agreement, and after providing

thirty (30) days' prior written notice to Licensee setting forth with reasonable particularity Licensee's default under this Agreement, Licensee fails to cure such default after such notice.

ii. Immediately, if Licensor, in its sole and unfettered determination, determines that Licensee's products or conduct are causing, or will cause the Trademark, the purpose of the Trademark as set forth in Section 2, above, or the Licensor to be devalued in the eyes of consumers of Berks County grown, raised, produced or processed products.

b. Notwithstanding the foregoing, either party may terminate this Agreement, for any or no reason, upon thirty (30) days' prior written notice to the other party.

c. Upon termination of this Agreement as set forth herein, the license granted by Licensor to Licensee to use the Trademark shall immediately terminate.

10. Governing Law. This Agreement is made pursuant to, and shall be construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania without giving effect to otherwise applicable principles of conflicts of law. Any action or counterclaim hereon shall be commenced or asserted, as the case may be, only in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. All parties hereto consent to the jurisdiction of such courts and waive any objection based on *forum non conveniens*.

11. Waiver. No failure on the part of Licensor to exercise and no delay in exercising any right or remedy under this Agreement or permitted or provided by statute, at law or in equity shall operate as a waiver thereof nor an estoppel thereto, nor shall any single or partial exercise by Licensor of any such right or remedy preclude any other or future exercise thereof, or the exercise of any other right or remedy.

12. Headings. The paragraph headings of this Agreement are for convenience only, form no part of this Agreement and shall not affect its interpretation.

13. No Assignment. Licensee may not assign its rights or delegate its duties hereunder, and may not sub-license the Trademark.

14. Notice. Any notice required under this Agreement must be in writing. Such notice shall be delivered either personally, by mailing certified first class with the United States Postal Service, return receipt requested, or by nationally recognized overnight courier (UPS, DHL, FedEx). Notice shall be deemed given when received in the case of personal delivery or upon the third (3rd) day following the date of deposit with the United States Postal Service or with nationally recognized overnight courier, unless actually received earlier. Notice shall be addressed to the parties at the address set forth above, or at such other address as the parties may designate in writing to the other.

Berks Agricultural Resource Network

President

Secretary

Date

Bountiful Berks™ Program
Licensing Agreement Signature Page

Corporation Signatures

If a company is incorporated, the Berks Agricultural Resource Network requires two (2) signatures on the Signature Page, the corporation's **President** or **Vice President** and the corporation's **Secretary** or **Treasurer**.

If for one reason or another, the signatory is **not a corporate officer**, the company must submit a **Letter of Signature Authorization**, signed by a corporate officer or a **Board Resolution**, authorizing that individual to sign off on the contract.

Sole Proprietor/Partnership Signatures

If a company is a sole proprietorship or partnership and **not incorporated**, only **one (1) signature** is required on the Signature Page, the **owner of the company** or **partner**.

EXHIBIT A

TRADEMARK IMAGE



Exhibit B

Bountiful Berks TM General Standards to Register

The Bountiful Berks TM logo may be used to denote any product or entity meeting the following criteria plus individual product category requirements listed in this Exhibit B. Sales entities not meeting the criteria to have the overall entity denoted as a Bountiful Berks business are encouraged to carry registered products and take part in the program's promotional and educational aspects.

Fresh, unprocessed food, nursery products and other agricultural commodities:

Fresh, unprocessed food, nursery products and other agricultural commodities can become licensed if they meet any one of the following criteria:

1. Must be 100% harvested (sourced) in a raw/live state from a Berks County location and follow good agricultural practices (GAP), or
2. Must be grown at a Berks County site for at least 75% of the product's production cycle and meet GAP quality standards.

Beef and Egg Producers must meet additional requirements and maintain certifications determined by their respective Industry. To be licensed with Bountiful Berks, producers of these products must be in compliance with the Beef Quality Assurance Program or the Pennsylvania Egg Quality Assurance Program.

Processed products:

Processed products meeting all state and federal food safety and sanitary requirements can become licensed if they meet **either one** of the following criteria:

1. Products must be final processed and packaged at a Berks County facility of a company that is headquartered in Berks County, or
2. If the primary agricultural ingredients of the processed product are grown in Berks County, the processor must agree to buy as much of that ingredient as is practical given seasonal restrictions and other business exigencies.

Processors/manufacturers:

A processor or manufacturer can become licensed in its entirety if it meets all of the following criteria:

1. Must be headquartered in Berks County with at least one processing facility located in the county;

2. Must agree to produce as many products meeting the criteria for “Processed Products” as practical given seasonal restrictions and other business exigencies, and
3. Their processing facility(ies) located in Berks County must be in compliance with all state and federal food safety and sanitary requirements and not have incurred a major violation of these requirements within the most recent calendar year. For establishments licensed with the Department of Agriculture, the threshold will be a passing score of 70 and cannot have critical violations not corrected within a 30-day period at any time within the most recent calendar year. For establishments registered with the Department, the threshold will be not having any major violation citations not corrected within a 30-day period within the most recent calendar year.

Grocery stores, nurseries and other retailers:

Grocery stores, nurseries and other retailers can become licensed in their entirety if they meet all of the following criteria:

1. Must be physically located within Berks County, and
2. Must carry at least 50 different products or brands meeting the criteria for either “fresh, unprocessed products” or “processed products” listed above, and
3. When Berks County grown produce and nursery stock is in season, grocery stores and nurseries must strive to merchandise as many of these available Bountiful Berks™ products as possible, and
4. Must meet all PA and US standards of health and safety.

Restaurant menu items:

Individual restaurant menu items that include featured ingredients meeting the standards listed for fresh or processed food products may be identified with the Bountiful Berks™ logo.

Restaurants:

Restaurants can become licensed in their entirety if they meet all of the following criteria:

1. Must be physically located within Berks County, and
2. Must strive to offer as many entrée items with featured ingredients meeting the criteria for either fresh or processed food products as practical given seasonal restrictions and other business exigencies, and
3. Must meet all PA and US standards of health and safety.

Indirect program participants:

1. Indirect participants, such as distributors, wholesalers and relevant trade associations, may become a Bountiful Berks™ supporting member as long as they do their best to support Berks County agriculture, and actively support and promote the Bountiful Berks™ program to their relevant constituencies, and
2. Indirect participants must sign a license agreement through which they will commit to using the logo only in connection with program purposes.