

# RAINFOREST ALLIANCE TERMS AND CONDITIONS (August 2023 Version)

## 1. Introduction

1.1. Rainforest Alliance, Inc., a New York not-for-profit corporation with headquarters located at 27 East 28th Street, 8th Floor, New York, NY 10016, U.S.A., (“RA”) is an international non-profit organization creating a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and foresters. RA develops and implements certification standards to promote sustainable agriculture. In 2018, Stichting UTZ, a Dutch legal entity based at the De Ruyterkade 6, 1013 AA Amsterdam, the Netherlands (together with its subsidiaries, “UTZ”), merged with RA and they are now affiliates.

1.2. These Terms and Conditions and the additional documents together comprising the Binding Documents (defined below) are binding on you in your dealings with RA. The Binding Documents cover the various elements of working with RA, including registration, audits and certification, traceability, and selling product as certified.

## 2. Definitions

2.1. “Binding Documents” shall mean the set of standards, policies, and rules that are applicable to different actors in RA’s programs, depending on the type of activity the actor is engaged in, together with these Terms and Conditions. RA has set forth the applicable Binding Documents on its website at <https://www.rainforest-alliance.org/business/binding-documents> and may introduce new Binding Documents by providing notice to you pursuant to section 13.5 (Notices) herein. The Binding Documents may be updated from time to time in accordance with their terms or the terms set forth in these Terms and Conditions.

2.2. “Certification Binding Documents” shall include any Binding Document categorized as such on the Binding Documents web page, and generally includes certification standards, policies, and rules.

2.3. “Certification Costs” shall mean the costs related to obtaining and maintaining certification.

2.4. “Certified Farm” shall mean a farm or group of farms certified as meeting the RA Standards.

2.5. “Certified Product(s)” shall mean those products or ingredients originating from a Certified Farm (in the case of the UTZ certification program, Certified Product refers to the certified crop) and passed through a Certified Supply Chain (regardless of whether such product is sold as certified or incorporated in a certification claim). Certified Product may also refer to product being sold as certified through the mass balance program set forth in the Binding Documents.

2.6. “Certified Supply Chain” shall mean a supply chain comprised of companies certified as meeting the RA Standards.

2.7. “License Terms and Conditions” shall mean the Rainforest Alliance License Agreement General Terms and Conditions as set forth at <https://www.rainforest-alliance.org/resource-item/rainforest-alliance-license-agreement-general-terms-and-conditions/>

2.8. “RA Marks” shall mean the RA name, UTZ name, and all other trademarks, certification marks, logos or other proprietary designations owned by RA and its affiliates and set forth in the Trademarks Schedule.

2.9. “RA Online Platform” shall mean those information technology systems used by RA to register you, record transactions in Certified Products, submit trademark approvals, or provide other information to RA, including, without limitation, traceability systems, claims platforms,

Marketplace 2.0, Rainforest Alliance Certification Platform, MultiTrace, GIP, and any other RA information technology system RA introduces.

2.10. "RA Standards" shall mean the sustainable agriculture standards developed or approved for use by RA, including, but not limited to, the UTZ Code of Conduct, the Union for Ethical BioTrade (UEBT) Standard and the UEBT/RA field checklist, the 2017 Rainforest Alliance Sustainable Agriculture Standard, the UTZ and Rainforest Alliance Chain of Custody standards and the 2020 Sustainable Agriculture Standards (including the farm and supply chain requirements).

2.11. "RA Traceability Reference" shall mean the unique identity of a record of a transaction of Certified Products as generated by an RA Online Platform (also known as a transaction certificate, TC or transaction).

2.12. "Rainforest Alliance License Terms and Conditions" shall mean the Rainforest Alliance License Agreement Terms and Conditions, which can be found at <https://www.rainforest-alliance.org/resource-item/rainforest-alliance-license-agreement-general-terms-and-conditions/>

2.13. "Royalties" shall mean amounts payable to RA set forth in the Royalty Schedule for the use of the RA Marks or the right to sell Certified Product as certified.

2.14. "Royalty Schedule" shall mean the Rainforest Alliance Royalty and Fees Schedule attached to the Rainforest Alliance License Terms and Conditions.

2.15 "Supply Chain Actors" shall mean those parties in the agricultural supply chain subsequent to Certified Farms, including buyers, traders, manufacturers and retailers.

2.16. "Supply Chain Data" shall mean data provided to RA under the applicable Certification Binding Documents within an organization's supply chain, together with analyses of such data.

2.17. "Terms and Conditions" shall mean these Rainforest Alliance Terms and Conditions.

2.18. "Trade Control Laws" shall mean U.S. and European Union ("EU")/EU member state and United Kingdom sanctions and export control laws and regulations and other applicable sanctions regimes, including, without limitation, United Nations sanctions that are implemented by the national legislation of United Nations member states, the economic sanctions administered by the U.S. Treasury Department, Office of Foreign Assets Control and export control laws and regulations administered by the U.S. Department of Commerce, Bureau of Industry Security.

### **3. Certification**

3.1. You agree to comply with all of the Certification Binding Documents applicable to your activities related to the applicable RA Standards. You understand that your certificate may be suspended, terminated or cancelled in accordance with the Certification Binding Documents.

3.2. You agree to accurately and fairly represent the certificate scope, type and status and the products or operations included within your applicable certification scope. You acknowledge that certification (including endorsement) applies only to the entities or business operations that are included in the certificate scope and does not extend to affiliates except to the extent such affiliates are included in the certificate scope.

### **4. Registration**

4.1. You are required to register on each RA Online Platform relevant to your RA activities or programs, as set forth in the Binding Documents or otherwise communicated to you by RA pursuant to section 13.5 (Notices) herein.

## **5. Costs and Traceability; Royalties**

5.1. Certification Costs. Certification Costs vary depending on the type of activity that you are engaged in. You may need to pay Certification Costs to a certification body (e.g., to conduct an audit) or to RA or to actors within a particular supply chain (e.g., to obtain a supply chain risk assessment or for a Sustainability Differential or Sustainability Investments). If you are required to undergo a supply chain risk assessment ("SCRA") as described in the Binding Documents, RA may introduce an SCRA fee paid to RA for each site included in the certification scope at the time that such SCRA is conducted.

5.2. Traceability References. RA Traceability References for transactions occurring during the calendar quarter or month must be entered within two (2) weeks following the end of such calendar quarter or month.

5.3. Royalties. You are responsible for payment of Royalties to the extent you are the applicable Supply Chain Actor responsible for payment of royalties as set forth in the Royalty Schedule or to the extent you have otherwise agreed to be assigned the obligation to pay Royalties, in which case the terms of the Rainforest Alliance License Terms and Conditions with respect to Royalty payment terms and obligations shall apply to such obligation.

5.4. Selling as Certified. You may only sell product as Certified Product if (i) it is Certified Product, and (ii) a Traceability Reference has been issued (if applicable, as set forth in the Binding Documents).

## **6. RA Marks**

6.1. No License for use of RA Marks. You may not use the RA Marks unless you have a valid license agreement with RA or otherwise have specific prior written authorization from RA regarding such use. Nothing in these Terms and Conditions grants you any rights to use the RA Marks.

6.2. Reservations. You acknowledge and agree that RA is the exclusive owner of the RA Marks and any trademark applications or registrations associated with the RA Marks. You agree that you will do nothing inconsistent with such ownership. You agree that nothing in these Terms and Conditions shall give you any right, title or interest in the RA Marks. You shall not in any manner represent that you have any ownership interest in the RA Marks or any registrations thereof and hereby waive and disclaim any ownership right or interest in or to the RA Marks that may arise under the law in any country, state or other jurisdiction. You shall not register or attempt to register the RA Marks or any similar marks in any form or manner, including but not limited to the designation of any goods, services, domain names, social media profiles, or certification programs in any country, state or other jurisdiction. You will not contest, impair, or otherwise challenge, directly or indirectly, RA's right, title, or interest in and to the RA Marks. You will not infringe or facilitate the infringement of any rights derived from the RA Marks.

## **7. Updates to Binding Documents**

7.1. The Binding Documents, including, without limitation, these Terms and Conditions, are subject to change. RA will provide notice of such changes to you pursuant to section 13.5 (Notices) herein. Minor changes to the Binding Documents to correct typos, clarify language, or that waive or lessen a requirement, shall be effective upon publication or as otherwise provided for in the notice. Substantive amendments or changes to the Binding Documents other than the Certification Binding Documents shall be effective no sooner than three (3) months following notice to you and publication on the RA website. RA will endeavor to provide at least three (3) months' notice regarding changes or introduction of additional documents to the Certification Binding Documents, but reserves the right to introduce such changes or additional Certification Binding Documents with immediate effect or on other notice shorter than three (3) months where necessary to protect the credibility and integrity of the RA certification scheme. You must ensure that your contact details as set forth in the applicable RA Online Platforms remain current at all times.

## **8. Responsible Conduct**

8.1. You commit to being a good and reliable partner to Rainforest Alliance, certification bodies, and Supply Chain Actors, and to adhere to agreements made with such parties.

8.2. You commit to adhere to internationally accepted principles of responsible business conduct, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The scale and complexity of the means through which you meet this commitment may vary according to your size, sector, operational context, ownership and structure, and with the severity of your enterprise's adverse human rights impacts.

## **9. Termination and Suspension**

9.1. Suspension, Cancellation or Termination of Certificates. The suspension, cancellation or termination of a certificate is subject to the terms and conditions set forth in the Certification Binding Documents.

9.2. Suspension and Termination of Participation in RA Online Platforms.

9.2.1. RA, may, upon written notice, suspend your participation in the RA Online Platforms if you breach or fail to comply with any of your obligations under the Binding Documents, *provided, that* RA sends you a notice of breach and gives you at least ten (10) days from the date set forth on the notice to cure such breach to the satisfaction of RA.

9.2.2. RA may immediately terminate your participation in the RA Online Platforms if (i) your activities, in the sole opinion of RA, reflect badly on the good name of RA or (ii) you become subject to sanctions under Trade Control Laws or violate or cause RA to violate or become subject to penalties or sanctions under Trade Control Laws, or in the event that RA determines that changes in Trade Control Laws make it impossible to comply with the Binding Documents or these Terms and Conditions. In the event of a termination related to Trade Control Laws, RA shall not be obligated to undertake any actions under the Binding Documents (including those set forth in Section 9.2.2 herein or pursuant to any selloff period) or provide any benefits to ORGANIZATION that would be prohibited or subject RA to penalties or sanctions.

9.2.3. Upon suspension or termination, you shall cease to have access to the RA Online Platforms for (i) registration of RA Traceability References, or (ii) access to data.

9.2.4. Upon termination of your participation in the RA certification scheme for any reason your rights and privileges under the Binding Documents shall immediately cease, and RA shall have no liability or obligation to you.

## **10. Audits**

10.1. RA shall have the right to audit your compliance with the Certification Binding Documents as set forth in the applicable Certification Binding Documents. You shall cooperate with RA, auditors and certification bodies during such audits as set forth in the applicable Certification Binding Documents.

## **11. Transparency and Confidentiality**

11.1. Public Information. RA seeks to bring transparency to certification and supply chains in the sectors in which we work. You acknowledge and agree that RA may publish the following information related to your operations. RA and certification bodies publish certification-related information for the general public in the form of public summaries. RA also publishes summary information about certificate holders, as set forth in the Certification Binding Documents, which can be found here: <https://www.rainforest-alliance.org/business/sustainable-farming/farm-certification/certificate-search-and-public-summaries/>, the content of which may be updated to incorporate additional information from time to time. RA may publish the certificate holder location along with the name of the certificate holder, the RA certificate identification code, crop type, size of

certified area, selling marks, certification status subject to any ongoing investigation, confirmed nonconformities with the RA Standards (if any) and their short descriptions, and number of farms covered by a group certificate. RA also publishes information on how to find certified products <https://www.rainforest-alliance.org/find-certified> and provides lists of publicly available certified products including barcode information to online retailers or other parties upon request based on the launch date indicated in the request for approval to use RA Marks. RA and its partners may use data collected or provided by or about your operations through the certification process to prepare and publish analyses, reports, and performance or risk metrics for the purposes of (1) improving our program, (2) demonstrating impact, (3) research including market research, (4) monitoring and evaluation, (5) to verify compliance with the Binding Documents, and (6) to evaluate data integrity and sector credibility. Such analyses, reports, and performance or risk metrics shall be aggregated and anonymized (to a minimum of three data points) to the extent they contain commercially sensitive information, for example, volume and commercial value. RA shall not be responsible or liable for any identifiability due to certificate scarcity in certain sectors or regions. This public information shall not be considered confidential. RA may publicly disclose information about its relationship with you not otherwise defined as public information in this section with your written consent, provided that you shall not unreasonably withhold or delay such consent.

#### 11.2. Audit and Supply Chain Data.

11.2.1. With Auditors and Certification Bodies. RA may share information relating to your operations with auditors and certification bodies as needed or helpful to support the certification program, including, without limitation, contact information, previous audit reports, traceability volume reports, sustainability differential payment and investments and any other information required to be shared as set forth in the Certification Binding Documents.

11.2.2. What RA will share within a Supply Chain. RA may share Supply Chain Data within a particular supply chain (in addition to information that may be published as described in Section 11.1 herein) as provided for in the Certification Binding Documents. You shall keep such Supply Chain Data confidential.

11.2.3. What RA Will Share with Third Parties Upon Request. If you request that RA share your Supply Chain Data with a third party, RA may do so on an aggregated and anonymized basis (to a minimum of three data points), provided that you execute a nondisclosure agreement with such third party.

11.2.4. With Third-Party Researchers. RA may share disaggregated anonymized certification performance data with third-party researchers to evaluate the effectiveness of our programs. Such disclosure shall always be subject to a nondisclosure agreement between RA and the third-party researcher.

11.3. Confidentiality. Other than as set forth herein in section 11.1 (Public Information) and 11.2 (Audit and Supply Chain Data), as between you and RA, neither party shall disclose or publish any information identified as confidential by the party furnishing it without the furnishing party's express written consent, unless (i) the disclosure is to the receiving party's attorneys or authorized agents; (ii) disclosure is required by law or by a judicial, governmental or regulatory body; (iii) such information was publicly available prior to its disclosure by the furnishing party or thereafter becomes publicly available without any violation of these Terms and Conditions or the Binding Documents by the receiving party; (iv) the information was available to the receiving party on a non-confidential basis prior to its disclosure by the furnishing party; (v) the information becomes available to the receiving party from a person other than the furnishing party or its representatives and such person is not, to the best knowledge of the receiving party, subject to any legally binding obligation to keep such information confidential; or (vi) RA determines that such disclosure is necessary to protect the integrity of the certification system and the reputation of RA and the RA Marks. The obligations under this section 11.3 (Confidentiality) herein shall survive for a period of three (3) years following the termination of these Terms and Conditions.

11.4. Personal Information. With respect to the collection, processing or transfer of personal information in connection with the RA certification scheme, you shall comply with any and all applicable data protection laws applicable to you and/or the individual about whom the personal

information will be collected, processed or transferred. Where necessary, you are responsible for obtaining consent to such collection, processing or transfer of personal information.

## **12. Limitation of Liability & Indemnification**

12.1. Limited Liability of RA. RA shall not be liable to you, any of your customers or any other person and/or entity for any claim, demand, cause of action, damages, judgment or settlement, or for any loss or injury to earnings, profits, or goodwill, or for any direct, indirect or consequential damages, including attorney's fees and court costs, resulting directly or indirectly from (a) your participation in RA Online Platforms or the RA certification scheme; (b) the marketing, manufacture, production, sale, use, advertising, promotion, distribution, processing, transport or other disposition of Certified Product; or (c) your failure to comply with these Terms and Conditions or any of the terms and conditions of the Binding Documents.

12.2. Indemnification by You. You agree to defend, indemnify and hold harmless RA, its affiliates and their respective officers, directors, agents, legal representatives and employees against and from all losses, expenses, damages, liabilities, claims, demands, judgments and settlements, including reasonable attorney's fees and court costs, relating to (a) your participation in RA Online Platforms or the RA certification scheme or your support of or collaboration with RA; (b) the marketing, manufacture, sale, production, use, advertising, promotion, distribution, processing, transport or other disposition of Certified Product, including without limitation the merchantability, quality, design or fitness for a particular purpose of Certified Product, product liability, personal injury, property damage, misrepresentation, fraud or defamation; or (c) your failure to comply with these Terms and Conditions or any of the terms and conditions of the Binding Documents, except with respect to (a) through (c) of this section, to the extent that such damages are attributable to RA's gross negligence or willful misconduct.

## **13. Other Provisions**

13.1. Compliance with Sanctions; Trade Controls Laws. You confirm that you are not, and will not, while participating in the RA certification scheme be (x) organized under the laws of or located in a country or territory subject to comprehensive sanctions under Trade Control Laws; (y) part of, nor owned or controlled by, nor acting for or on behalf of, the government of a U.S. or EU sanctioned country or territory subject to comprehensive sanctions under Trade Control Laws; or (z) otherwise subject to sanctions under Trade Control Laws. You must promptly notify RA if you cannot comply with this section at any point while you are participating in the RA certification scheme. You agree at all times to (i) comply with Trade Control Laws; (ii) ensure that all of your agents and successors comply with Trade Control Laws; and (iii) refrain from taking any actions that would subject RA to penalties or adverse consequences under the Trade Control Laws.

13.2. Mutual Representations & Warranties. You and RA each warrant to each other that (a) they are duly organized and validly existing and have full power and legal right to consent to these Terms and Conditions and to perform the obligations of the Binding Documents on their parts to be performed; (b) the execution, delivery and performance of these Terms and Conditions and acceptance and performance of the other Binding Documents have been duly authorized by all necessary corporate and governmental action; and (c) these Terms and Conditions and the other Binding Documents are their valid and binding obligations, enforceable against them in accordance with their terms.

13.3. Dispute Resolution. In the event of any dispute, controversy or claim between you and RA relating to the Binding Documents or these Terms and Conditions, the parties shall, prior to initiating any litigation, arbitration, or other dispute resolution mechanism, first seek to resolve the dispute through informal discussions (or, if related to certification or a certificate, then in accordance with the RA Grievance Procedure or other procedures outlined in the Certification Binding Documents). In the event the parties do not resolve the dispute through informal discussions (or in accordance with the Certification Binding Documents), the parties agree that any disputes shall be resolved through:

13.3.1. If you are domiciled in the United States, litigation in a court of competent jurisdiction in New York City, New York, USA, or

13.3.2. If you are domiciled outside the United States, binding arbitration in New York City, New York, U.S.A, in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as in effect at the time of the claim. The appointing authority shall be the International Centre for Dispute Resolution (“ICDR”). The case shall be administered by the ICDR under its Procedures for Cases under the UNCITRAL Arbitration Rules. The language of the arbitration shall be English. The dispute shall be resolved by three arbitrators, of whom each party shall select one, with the third arbitrator to be selected by the two party-appointed arbitrators within 30 days of the appointment of the second party-appointed arbitrator. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the ICDR. The decision of the arbitrators shall be final and binding upon the parties and their respective successors and assigns, and the parties agree that judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Except as may be required by law, neither a party nor any arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

13.4. No Waiver. The failure by either party to enforce any of the provisions of the Binding Documents shall in no way be considered a waiver of such provisions or in any way affect the validity of the Binding Documents.

13.5. Notices. All notices and statements to be given and all payments to be made hereunder shall be in writing and given or made electronically at the address as set forth in the RA Online Platforms. It is your responsibility to provide timely updates of your contact information on any RA Online Platform on which you are registered, and you shall be deemed to have been given valid notice sent by RA using the information on the applicable RA Online Platforms at the time such notice is delivered.

13.6. Governing Law. The Binding Documents shall be governed by, and construed in accordance with, the laws of the State of New York, United States of America (excluding New York’s choice of law rules).

13.7. Severability. In the event that any one or more provisions of the Binding Documents shall be or become invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of the Binding Documents shall not be affected.

13.8. Precedence of Binding Documents. The following order of precedence of the Binding Documents shall apply in the event of any inconsistency between them: (i) the Certification Binding Documents (other than the UTZ Terms and Conditions), (ii) a license agreement between you and RA, if applicable, (iii) these Terms and Conditions, and (iv) all other Binding Documents. In the event of any inconsistency between these Terms and Conditions and the UTZ Terms and Conditions, these Terms and Conditions shall govern.

13.9. Section Headings. Section headings in these Terms and Conditions are for convenience of reference only and are not to be taken into consideration in the interpretation hereof.

13.10. Language. The Binding Documents are prepared in the English language, which language shall be controlling in all respects. Any translations of the Binding Documents into any other languages are for reference only and shall have no legal or other effect.

13.11. Amendment/Waiver. No amendment or waiver of any provision of these Terms and Conditions or the other Binding Documents shall be effective unless in writing and signed by the parties hereto. Notwithstanding the foregoing, RA shall have the right to amend the Binding Documents, as set forth in these Terms and Conditions.

13.12. Non-transferable. You shall not sell, assign, sub-license, or otherwise transfer any of its rights under the Binding Documents to any third party.

13.13. Consent. Your electronic acceptance to these Terms and Condition via checkbox, click-through, or other similar electronic means of acceptance on an RA Online Platform constitutes valid and binding consent to these Terms and Conditions.

13.14. Responsible Use of RA Online Platforms.

13.14.1. You shall register transactions of Certified Product on the RA Online Platforms to the extent required by, and in accordance with, the guidelines in the Binding Documents.

13.14.2. You acknowledge that the RA Online Platforms serve the purpose of monitoring credibility by administering transactions in Certified Product or equivalent volumes.

13.14.3. You will refrain from any action that may jeopardize the credibility, the purpose or the functionality of the RA Online Platforms. Usernames and passwords are to be kept confidential and cannot be transferred to other users without the prior written consent of RA.

13.14.4. You will not use the RA Online Platforms:

- to circumvent or manipulate the fee structure, the billing process, or fees owed to RA,
- to post false, inaccurate, misleading or offensive content,
- to distribute or post spam, unsolicited, or bulk electronic communications, chain letters, or pyramid schemes,
- to distribute viruses or any other technologies that may harm RA, or the interests or property of other users of the RA Online Platforms,
- to copy, modify or distribute rights or content from the RA Online Platforms, or
- to harvest or otherwise collect information about users, including email addresses, without their (or RA's) consent.

13.14.5. RA takes no responsibility and assumes no liability for any content posted in any RA Online Platform by you or any other user of the RA Online Platform ("User Data") or for any analysis, aggregation, mapping, or similar activities conducted by RA where the accuracy or reliability of such activity depends on the accuracy or reliability of User Data. RA is not a party to any agreements entered into between you and other participants in the RA certification program.

13.14.6. The RA Online Platforms are provided to you on an "as is" and "as available" basis without any representation, endorsement or warranty of any kind, express or implied (by law or otherwise) as to (i) availability or (ii) freedom from bugs, defects or viruses. To the maximum extent permitted by law, RA excludes all representations, warranties, conditions, and other terms relating to the RA Online Platforms, except that RA commits to the following:

- RA will use commercially reasonable efforts to make the RA Online Platforms available 24 hours a day, 7 days a week except (a) during planned downtime (of which RA will give advance notice on the applicable RA Online Platform) and (b) during downtime that is the result of forces beyond RA's reasonable control, including, but not limited to, an act of God, act of government, flood, fire, earthquake, civil unrest, pandemic, act of terror, strike or other labor problem (other than one involving RA employees), internet



service provider failure or delay, or acts undertaken by third parties, including without limitation denial of service attacks or other cyberattacks.

- In the event of extended downtime of an RA Online Platform that materially impacts your ability to sell Certified Product as certified, RA will use commercially reasonable efforts to provide alternative work-arounds or other solutions in order to reduce such negative impacts.

13.14.7. RA reserves the right to collect http header information and to make use of cookies on its systems for tracking and analytical purposes.

13.15. Personal Information. With respect to the collection, processing or transfer of personal information data in connection with the RA certification scheme, you shall comply with any and all applicable data protection laws applicable to you and/or the individual about whom the personal information will be collected, processed or transferred. Where necessary, you are responsible for obtaining consent to such collection, processing or transfer of personal information.