

# WYOMING FIRST PROGRAM - LICENSING AGREEMENT

## 1. PARTIES

This Agreement, by and between the Wyoming Business Council ("WBC"), 214 West 15<sup>th</sup> Street, Cheyenne, WY 82002, and \_\_\_\_\_ (Licensee), having its place of business at: \_\_\_\_\_ (Street Address, City, State and Zip Code)

Licensee Contact: Telephone Number with Area Code: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_.

Whereas, the WBC is the authorized custodian of the designs as shown in Exhibit A attached hereto; and whereas, Licensee desires a license to use the designs, in the form of labels and hang tags, with the products listed in Exhibit B, attached hereto. Now therefore, for and in consideration of the mutual covenants and undertakings hereinafter set forth, and other good and valuable consideration, it is agreed as follows:

## 2. DEFINITIONS

(a) The term "Label(s) and/or Hang Tag(s)" shall mean adhesive labels and hang tags issued or sold exclusively by the WBC as shown in Exhibit A.

(b) The term "Licensed Product(s)" shall mean any product or part thereof utilizing Labels and/or Hang Tags, approved in writing by the WBC and/or listed in Exhibit B.

(c) The term "Parties" shall mean WBC and Licensee.

## 3. GRANT OF LICENSE

(a) Subject to the terms of this Agreement and to the extent permitted by law, the WBC hereby grants Licensee a limited revocable non-exclusive license to be obtained from the WBC and the use of Labels and/or Hang Tags on the Licensed Products in the United States of America.

(b) Licensee shall be the producer, manufacturer or individual who substantially enhances the Licensed Product.

(c) Licensee shall not assign or sublicense the rights granted under this License.

(d) Licensee agrees that nothing herein shall give to the Licensee any right, title or interest in the Labels and/or Hang Tag designs (except the right to use the Labels and/or Hang Tags under the terms of this Agreement), and that the Label and/or Hang Tag designs are controlled by the WBC, and that all uses of the Labels and/or Hang Tags by Licensee shall inure to the benefit of the WBC.

(e) Licensee understands and agrees that the "bucking horse and rider" trademark, which is an element of the Label and/or Hang Tag overall design, is a registered trademark of the State of Wyoming. The State of Wyoming has granted the WBC the approval to utilize the "bucking horse and rider" trademark in their Label and/or Hang Tag designs and any subsequent licensure.

#### **4. LICENSED PRODUCTS**

(a) Licensee agrees to only use the Labels and/or Hang Tags on products listed in Exhibit B or on products otherwise approved in writing by the WBC.

(b) Licensee agrees that all Licensed Products manufactured and sold by it will be the same or substantially identical in quality and appearance to the products approved by WBC.

(c) Licensee understands and agrees that the Label and/or Hang Tag designs, or any confusingly similar representation thereof, cannot be manufactured into the Licensed Products as an integral part of the product, its labeling or packaging. Should Licensee incorporate the "bucking horse and rider" trademark into the product, its labeling or packaging in any way, this Licensing Agreement shall terminate and all rights to use the "bucking horse and rider" pursuant to the terms of the Agreement shall be forfeited. Incorporating the "bucking horse and rider" trademark into a product, its labeling or packaging requires obtaining a **separate** Licensing Agreement from the State of Wyoming trademark Licensing office.

#### **5. FEE**

(a) As consideration for this license, Licensee agrees to pay the WBC a fee of \$35.00 for a two year license at the time of signing this Agreement.

#### **6. USE OF LABELS AND/OR HANG TAGS**

(a) Licensee agrees that in the exercise of its rights under this Agreement, it will not state or imply either directly or indirectly that Licensee or Licensee's activities, other than those required by this Agreement, are supported, endorsed or sponsored by the WBC. Licensee also agrees that it will not alter, modify, dilute or otherwise misuse the Labels and/or Hang Tags, or bring them into disrepute.

(b) Licensee acknowledges WBC's exclusive right, title and interest in and to the Label and/or Hang Tag designs, and will not in any manner represent that Licensee has any ownership therein, and will not knowingly in any way do or cause to be done any act or thing contesting or in any way impairing any part of such right, title and interest. Licensee therefore agrees, except for the rights granted herein, not to register or attempt to register, in any jurisdiction, any of the Label and/or Hang Tag designs.

(c) Licensee understands and agrees that the WBC is the only supplier of the Labels and/or Hang Tags, and that any other source of labels, hang tags, or similar item(s) that are identical, or confusingly similar, to the Labels and/or Hang Tags in Exhibit A cannot be used.

(d) Licensee agrees to only use the Labels and/or Hang Tags on approved Licensed Products and is not allowed to give away, sell or otherwise distribute Labels and/or Hang Tags to others.

(e) Licensee agrees to only use the Labels and/or Hang Tags in conjunction with the promotion of Wyoming produced, manufactured or substantially enhanced products and services.

(f) Licensee may use the same Labels and/or Hang Tags in electronic form for the same products advertised on the Licensee's website or in advertising.

## **7. DISPLAY OF BUSINESS NAME**

(a) Licensee agrees to cause Licensee's own name to appear on each Licensed Product or its container/packaging, in a clearly visible location and manner, such that one can easily determine who the Licensee is.

## **8. INDEMNIFICATION**

(a) Licensee, for and in consideration of and as a condition to the granting of this license, hereby agrees to indemnify and hold harmless and release and forever discharge the WBC and the State of Wyoming and its agents, officers and employees, either in their individual capacities or by reason of their relationship to the WBC and the State of Wyoming and its successors, from any and all claims and demands whatsoever which Licensee and any or all other persons have against the WBC and the State of Wyoming, or any or all of the above-mentioned persons or their successors, by reason of any damage, or other consequences arising or resulting directly or indirectly from the license herein and hereby granted and occurring at any time subsequent to the grant of the license.

(b) With respect to any claims falling within the scope of the foregoing indemnification: (a) each party agrees promptly to notify the other of and keep the other fully advised with respect to such claims and the progress of any suits.

(c) Licensee, by this Agreement, acknowledges that by receiving a right to use the Labels and/or Hang Tags the WBC or the State of Wyoming does not endorse or otherwise warrant that the product is fit (or safe) for the intended use.

## **9. METHODS OF TERMINATION**

(a) Should Licensee fail to comply, in whole or in part, with any provision of this Agreement, the WBC may terminate this Agreement on thirty (30) days written notice, provided, however, that such notice shall be void and of no effect if Licensee corrects such default during the thirty (30) day notice period. Subsequent failures to comply, in whole or in part, with any provision of this Agreement may result in termination of this Agreement.

(b) This Agreement shall expire two (2) years from the date of the last Secretary of State's signature. However, this Agreement and all rights hereby granted may be revoked and terminated at any time by the WBC without cause on thirty (30) days written notice. Should Licensee decide to terminate this Agreement, Licensee must notify the WBC in writing.

(c) Termination of this Agreement shall not impair any accrued rights of the WBC, including but not limited to, indemnification as specified in section number 8.

## **10. EFFECTS OF TERMINATION**

(a) Upon termination of this Agreement, all rights granted to Licensee hereunder shall revert to the WBC, and Licensee shall make no claims to such rights.

## **11. LICENSEE'S DUTIES UPON TERMINATION**

(a) Upon termination of this Agreement, all Labels and/or Hang Tags will be immediately returned to WBC or destroyed by Licensee.

## **12. REMEDIES**

(a) Licensee acknowledges that its breach of this Agreement will result in immediate and irreparable damage to the WBC, and that money damages alone would be inadequate to compensate the WBC. Therefore, in the event of a breach or threatened breach of any provision of this Agreement by Licensee, WBC may, in addition to all other remedies, immediately obtain and enforce injunctive relief prohibiting the breach or compelling specific performance.

## **13. SEVERABILITY**

(a) Should any provision of this Agreement be held unenforceable or in conflict with the law of any applicable jurisdiction, then that/those provision(s) shall be void but the validity of the remaining provision(s) shall not be affected by such a holding.

## **14. MODIFICATION AND WAIVER**

(a) The parties agree that this Agreement may be modified from time to time only in writing and signed by both parties.

(b) It is agreed that no waiver by either party hereto of any breach of any of the provisions herein set forth shall be deemed a waiver as to any subsequent and/or similar breach.

## **15. ASSIGNABILITY**

(a) This Agreement shall inure to the benefit of the WBC, its successors and assigns, but shall be personal to Licensee and shall be assignable by Licensee only with prior written consent of the WBC. Such consent will not be unreasonably withheld.

## **16. GOVERNING LAW**

(a) This Agreement shall be governed and construed by the laws of the State of Wyoming, and this Agreement has been negotiated and executed in the State of Wyoming and is enforceable in the courts of Wyoming.

## **17. GOVERNING CLAIMS**

(a) Any actions or claims against the WBC or the State of Wyoming under this Agreement must be in accordance with and are controlled by the Wyoming Governmental Claims Act, W.S. 1-39-101 et seq. (1977) as amended.

## **18. SOVEREIGN IMMUNITY**

(a) Neither the WBC nor the State of Wyoming waives its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

## **19. KICKBACKS**

(a) The Licensee certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Licensing Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this License. If the Licensee breaches or violates this warranty, the Agency may, at its discretion, terminate this License without liability to the Agency, or deduct from the Licensee price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingent fee.

## **20. ENTIRE AGREEMENT**

(a) This Agreement, including Exhibits A and B, contains the entire Agreement between the parties with regard to the subject matter hereof and supersedes all other statements and representations pertaining to this subject matter.

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**IN WITNESS WHEREOF, the parties have executed this Agreement to become effective on the last date set forth below.**

**Licensee:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Wyoming Business Council:**

By: \_\_\_\_\_  
Terri Barr, Wyoming Products Program Manager

Date: \_\_\_\_\_

**Secretary of State:**

By: \_\_\_\_\_  
Thomas Cowan, Director Admin Services

Date: \_\_\_\_\_

# EXHIBIT A

## Protected Label and Hang Tag Designs

### WYOMING BUSINESS COUNCIL WYOMING FIRST PROGRAM

	<p><b><u>LABEL</u></b>  <b>Actual Size: 1” Diameter</b>  <b>Color: Yellow/Brown shading</b></p>		<p><b><u>LABEL</u></b>  <b>Actual Size: 1 ¼”</b>  <b>Color: White background with Red/Yellow shading</b></p>		<p><b><u>LABEL</u></b>  <b>Actual Size: 1” Square</b>  <b>Color: Metallic, Black background with Red/White shading</b></p>
	<p><b><u>HANG TAG</u></b>  <b>Actual Size: 2 ¼” x 2 ¼”</b>  <b>Color: Yellow/Brown shading</b></p>		<p><b><u>LABEL</u></b>  <b>Actual Size: 1 ¼” Diameter</b>  <b>Color: Metallic Gold with Black letters</b></p>		<p><b><u>LABEL</u></b>  <b>Actual Size: ¾” Diameter</b>  <b>Color: White Background with Red shading and Black letters</b></p>

# EXHIBIT B

The labels and/or hang tags will be used on the following products:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_