

## AGREEMENT

### Article I - Licensee

1. In consideration of the mutual promises contained herein, the State of Ohio, by and through the Ohio Department of Agriculture (hereinafter "ODA") hereby grants to:

Company Name: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

(hereinafter "Licensee") the nonexclusive right to use the OHIO PROUD Program Marks and logotypes as depicted in Exhibit A attached hereto and incorporated herein by reference (hereinafter "Marks") which are the exclusive property of ODA, subject to the terms of this Agreement.

2. The Licensee shall not acquire and shall not claim any right, title or interest in and to the Marks except the right to use the Marks in accordance with the terms of this Agreement. Licensee acknowledges and agrees that the limitations set forth herein concerning use of the Marks are of the essence of this Agreement.

### Article II - Use of Marks, ODA Approval

1. The Marks shall only be used as a Certification Mark on article labels and in advertisements to identify those articles which meet the definition of "product" and "produced in Ohio" as defined in rule 901:4-6-01 of the Ohio Administrative Code. All use shall be in accordance with the terms of this Agreement and rules 901:4-6-01 through 901:4-6-05 of the Ohio Administrative Code which are marked "Exhibit A", attached hereto, and incorporated into and made a part hereof as if fully rewritten herein.

2. Licensee acknowledges that the license provided hereunder was granted based on representations and assurance provided by Licensee in its application for license under Rules 901:4-6-01 through 901:4-6-05 of the Ohio Administrative Code. Licensee further represents that, to the best of Licensee's knowledge, the information set forth in Licensee's application is true and accurate. In the event Licensee's products cease to comply with the rules set forth in Article II, Paragraph 1 above, Licensee will immediately advise ODA of said noncompliance and will immediately cease any and all use of the Marks. Licensee acknowledges that any misrepresentations set forth in the application and/or subsequent renewal applications constitute a material breach of this Agreement.
3. The Marks shall, whenever possible, be reproduced in the original colors. If these colors cannot be used then the Marks shall be printed in black and white or the darkest practicable color scheme.
4. Prior to using the Marks on product labels, the Licensee shall submit a sample of each proposed label to ODA for its approval. No label employing the Marks shall be used without prior approval by ODA. Upon approval by ODA, Licensee agrees to employ the Marks in a manner such that all labels and advertising used thereafter shall be of a standard equal to the sample initially approved by ODA.

#### Article III - Protection of Marks

1. The Licensee shall use no other name, mark, designation or logotype which, in the sole opinion of the Director of ODA, is confusingly similar to the OHIO PROUD Program Marks.
2. The Licensee shall not use the Marks in any manner which, in the sole opinion of the Director of ODA, expresses or implies that products identified by the Marks are fit for a particular purpose, or have received any type of approval as to quality or standards, other than as set forth in Rule 901:4-6-04 of the Ohio Administrative Code.
3. The Licensee shall not use the Marks in a manner which, in the sole opinion of the Director of ODA, is deceptive, misleading, inaccurate, likely to cause consumer confusion, constitutes unfair competition, or is otherwise adverse or inconsistent with the laws of the State of Ohio and/or ODA's rights.

4. The Licensee acknowledges the validity and commercial value of the Marks and ODA's exclusive ownership, right and interest in and to the Marks. The Licensee further acknowledges that in order to protect the integrity of the Marks, all products or advertising to which it affixes the Marks, must comply with relevant provisions of the Ohio Administrative Code. The Licensee shall assist ODA in maintaining its ownership right in the Marks and preserving the integrity and identity of the Marks by properly advising ODA if the Licensee becomes aware of any unlicensed use of the Marks or any use by another licensee inconsistent with the terms of this Agreement or the Ohio Administrative Code.
5. ODA shall have the sole right and discretion to bring an action for infringement or dilution of its Marks, unfair competition or like actions. ODA may commence or prosecute any claims or suits in its own name or in the Licensee's name or join the Licensee as a party thereto. However, the Licensee shall not institute any suit or take any actions for such infringement or unfair competition without first obtaining ODA's written consent. In the event of litigation, the Licensee agrees to fully cooperate with ODA including making its personnel available to ODA at no cost or expense. Any litigation shall be at the sole cost and expense of ODA and only ODA shall be entitled to any recovery thereunder.
6. The Licensee agrees to cooperate fully with ODA in registering, policing and maintaining the Marks in ODA's name, for use in connection with the stated purpose of the Marks. Where samples of products and advertisements are required for such registration, policing and maintenance, the Licensee agrees to supply same at no cost to ODA. Otherwise, the cost of registration, policing and maintenance shall be ODA's responsibility.

#### Article IV - Warranties

1. The Licensee warrants that it has no outstanding final judgments against it by the State, including tax liabilities, and agrees that any payments incurred by the State in this Agreement may be applied against such liabilities currently owing or incurred in the future.
2. The Licensee warrants it is not listed with the Secretary of State for unfair labor practices, pursuant to Ohio Revised Code 121.23.
3. The Licensee warrants it has not exceeded the limitations in Ohio Revised Code 3517.13(I) and (J) in making any contributions to the holder of the public office having ultimate responsibility for the award of this Agreement or to his campaign committees.

4. The Licensee affirmatively represents and warrants to the State that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. The Licensee agrees that if this representation and warranty is deemed to be false, the Contract shall be void *ab initio* as between the parties to this Contract, and any funds paid by State hereunder shall be immediately repaid to State, or an action for recovery may be immediately commenced by State for recovery of said funds.

#### Article V - Compliance with Law

Licensee agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder, including the Drug-Free Workplace Policy. Further, to establish its compliance with the Policy, Licensee agrees to sign the Certificate of Drug-Free Workplace Compliance, attached hereto and made a part hereof.

Licensee accepts full responsibility for payments of all unemployment compensation insurance premiums, workers compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Licensee in the performance of the work authorized by this Agreement.

#### Article VI - Indemnity

Licensee shall indemnify, defend and hold harmless ODA from any and all liabilities, claims, causes of action, suits, proceedings, and all damages and expenses (including any reasonable attorneys' fees) incident thereto for which Licensee may be liable or may incur or be compelled to pay arising out of any actions, whether by omission or commission, of Licensee, its servants, agents or employees, in connection with or arising out of its use of ODA's Marks.

#### Article VII - Ohio Ethics Law Requirement

1. The Licensee shall adhere to the requirements of the Ohio Ethics Law as provided by Section 102.04 of the Ohio Revised Code. Division A of this Section prohibits a state official or employee from receiving compensation, other than from his own agency, for personal services rendered in a case, proceeding, application, or other matter before any state agency. Division (B) of this Section prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding.

2. It is understood by the parties that non-elected state officials and employees may qualify for an exemption under Division (D) of this Section, if: (1) the agency with which the official or employee seeks to do business is an agency other than the one with which he serves; and, (2) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files a Revised Code 102.04(D) statement with the Ohio Ethics Commission, the agency with which he serves, and the agency with which he seeks to do business. The statement must include a declaration that the official or employee disqualifies himself for a period of two years from any participation in his official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.
3. It is expressly understood and agreed to by the parties that a failure by the Licensee to file a declaration statement as required under Division (D) of Section 102.04, may be considered by ODA as a breach of a material condition of this Agreement and ODA may, if it so elects, void this Agreement.

#### Article VIII - Amendments

1. No change to any provision of this Agreement shall be effective unless stated in writing and signed by both parties to this Agreement.
2. Notwithstanding paragraph 1 of this Article, ODA may, as it deems either necessary or desirable, and without incurring any obligation or liability to the Licensee, amend, rescind or adopt new administrative rules under Chapter 901:4-6 of the Administrative Code. Any amendments, rescissions or additions shall, upon adoption of ODA under Chapter 119 of the Revised Code, become amendments to this Agreement binding upon both ODA and the Licensee.

#### Article IX - Conflict and Severability

1. In the event of conflict between the Agreement and applicable laws, regulations, or orders of any competent authority having jurisdiction or in the event of any conflict between such applicable laws or regulations or orders, the most stringent or legally binding requirement shall govern and be considered as a part of this Agreement in order to afford ODA the maximum benefits thereof.
2. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.

#### Article X - Termination

1. Except in the case of a breach resulting from circumstances beyond the control and without the fault or negligence of the Licensee, ODA shall be entitled, by written or oral notice, to cancel this Agreement in its entirety or in part, for breach of any terms of this Agreement.
2. No term or provision of this Agreement shall be deemed waived and no breach excused unless the waiver or consent is in writing and signed by both parties to this Agreement. ODA may at its discretion, in event of a breach, notify the Licensee of the breach and allow it a time specified by ODA to correct the breach.
3. Either ODA or the Licensee may in good faith unilaterally terminate this Agreement in whole or in part, at any time and for any good reason by giving thirty (30) calendar days written notice to the other.

#### Article XI - Assignment

Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or sublicensed by either party hereto.

#### Article XII - Applicable Law, Headings

1. This Agreement and any claims arising in any way out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and Licensee hereby irrevocably consents to such jurisdiction.
2. The headings used in this Agreement are for convenience only and shall not be used in interpreting this Agreement.

Article XIII - Relationship Between ODA and Licensee

The Licensee shall not represent itself as ODA's agent or legal representative for any purpose whatsoever, and shall have no right to create or assume any obligation of any kind, express or implied, for or on ODA's behalf in any manner whatsoever. Furthermore, it is the express intention of the parties that the Licensee is an independent contractor and that no employment, partnership or joint venture relationship shall exist between Licensee and ODA.

Article XIV - Entire Agreement

This written Agreement, including "Exhibits A and B" which are expressly made a part of this Agreement, constitutes the entire Agreement between the Licensee and ODA, and there are no other agreements between them, either oral or written. The Licensee acknowledges and accepts the validity of this Agreement and agrees it will not attack the validity of same.

Article XV - Effective Date, Expiration Date, Renewal

This Agreement shall take effect at 12:01 a.m. Eastern Standard Time upon the date last signed below and expires 11:59 p.m., December 31, 2010.

If the Licensee renews any or all of its registered products in accordance with rule 901:4-6-03 of the Administrative Code, this Agreement shall automatically renew effective with the registration renewal, and expire on December 31, of the following calendar year.

IN WITNESS WHEREOF, ODA through its legally appointed Director and Licensee through its duly authorized representative have caused this Agreement to be executed on the dates set forth below.

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

\_\_\_\_\_  
Tax Identification Number

Witness: \_\_\_\_\_

State of Ohio,  
Ohio Department of Agriculture

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Robert Boggs, Director

Witness: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David D. Gorman  
Legal Counsel

Approved As to Form:  
Attorney General

By: \_\_\_\_\_  
James R. Patterson  
Assistant Attorney General

OFFICE OF DRUG-FREE WORKPLACE PROGRAMS  
DIVISION OF STATE PERSONNEL  
DEPARTMENT OF ADMINISTRATIVE SERVICES

Certificate of Drug-Free Workplace Compliance

The undersigned certifies that, while working on state property, he/she will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State