



**CERTIFICATION MARK PRODUCTION LICENSE AGREEMENT
GROWN IN COLORADO®**

This Certification Mark License Agreement (“Agreement”) is made between the Colorado Nursery & Greenhouse Association, a not-for-profit corporation, organized under the laws of the State of Colorado, with its principal place of business at 959 S. Kipling Parkway, Suite 200, Lakewood, Colorado 80226 ("Licensor") and

_____ with a principal place of business at
_____ ("Licensee").

Whereas, Licensor is the owner of the federally registered certification mark GROWN IN COLORADO® and design, Registration Number 1,887,655, (Certification Mark) and has developed a Certification Program relating to the use of the Certification Mark, including Plant Usage Standards, Graphic Standards, and Usage Options;

Whereas, Licensee is eligible to apply for a license to participate in the Certification Program by virtue of being a dues paying member in good standing of the Colorado Nursery & Greenhouse Association;

Whereas, Licensee desires to use the Certification Mark on plant material under the provisions of the Certification Program; and

Whereas, Licensor is prepared to grant to Licensee the non-exclusive right to use the Certification Mark, subject to compliance by the Licensee with the terms and conditions of this Agreement and the Certification Program.

In consideration of the facts set forth above and the mutual commitments, promises and obligations set forth in this Agreement, Licensor and Licensee agree as follows:

1. GRANT OF RIGHT TO USE CERTIFICATION MARK: Licensor grants to Licensee the right and License to use the Certification Mark, but no other trademarks, trade names, labels or logos of Licensor. The License grants to Licensee the right to use the Certification Mark solely in connection with the Certification Program as set forth in this Agreement. Licensee accepts the grant of the License subject to the terms and conditions set forth in this Agreement. Licensee shall not use the Certification Mark in any other form in connection with any other business or product without the prior written consent of Licensor.

2. FEE FOR PROGRAM PARTICIPATION: As a member of CNGA, the Licensee is able to use the mark at no additional cost.

3. PROGRAM STANDARDS AND GUIDELINES: The Certification Mark may be used only on plants that comply with the Plant Usage Standards and Guidelines of the Program.

(a) PLANT USAGE STANDARDS: The Certification Mark may be used on edibles, annuals, perennials, shrubs, and trees that are grown in Colorado. Plants grown from seed must be sown and grown in Colorado. Plants from un-rooted, calloused or bare root that do not require upshifting must be established and well rooted as evidenced by the soil ball remaining intact when removed from its container. Plants from plug or liner must have been shifted up at least one container size and are established and exhibit a well-rooted condition as evidenced by the soil ball remaining intact when removed from its container or burlap as defined in the Colorado Nursery Act. The finished plant must be grown in Colorado to the point of being ready for sale.

(b) GRAPHIC STANDARDS: The Certification Mark must be placed in ways approved in the attached Graphic Standards that define the primary and secondary color pallet, typeface, clear-space, and application. The Certification Mark may only be used as provided and no modifications are permitted.

(c) USAGE OPTIONS: In order to participate in the Program, Licensee must elect among options for using or applying the Certification Mark. For use during the term of the Agreement, Licensee may elect one or more options from those listed below under Options and Restrictions. Licensee's election of options is binding within each Agreement and will not be modified during the term of the Agreement. Changes during the term can be implemented by entering into a new annual Agreement, with new option selections and with submission of a new annual license fee. All Certification Mark application choices require adherence to the Plant Usage Standards, Graphic Standards, and Usage Options of this Agreement.



(1) PLANT MARKING -- Use of the Certification Mark on plants qualified under the Plant Usage Standards.

Mark Impressions: Use of the Mark on plant containers, by attaching suitably impressed labels, tags or other similar attachments to surroundings or on approved materials.

Stick tags: Use of the Mark on tags to be inserted into the plant container.

Hang tags: Use of the mark on hang tags to be affixed directly to the plant branch, stem, or leaf.

(2) ONLINE: Use of the Certification Mark on Licensee's website, electronic communications, online advertising, social media, and any other online communication.

(3) PRINT: Use of the Certification Mark on stationary, invoices, business cards, plant catalogues, brochures, checks, shipping boxes, vans, trucks, newspaper and magazine ads, and any other print application.

(4) APPAREL: Use of the Certification Mark on any clothing item that is worn by employees of the Licensee. **Apparel items may not be sold as a product.**

(d) PLANT MARKING USAGE CHARGES AND REPORTS: The Agreement automatically allows Licensee to use the Certification Mark for option (1), Plant Marking, i.e., on impressed labels, stickers and tags. In addition, Licensee automatically is allowed an outdoor promotional banner. Licensee will report its usage of Mark impressions by a semi-annual report, due within thirty days of the close of each six month period under this Agreement.

Licensor has arranged with two label producers to supply pre-approved, impressed labels, stickers and tags. The approved label producers are Master Tag and John Henry. As part of this Agreement, Licensee agrees to authorize and hereby does authorize the approved label producers to submit the semi-annual report to Licensor on behalf of Licensee.

If the Licensee chooses a previously non-preapproved producer for the logo applications, Licensee agrees to inform Licensor of contact information for the producer prior the annual effective date or renewal for this Agreement. Licensee consents to and hereby authorizes the chosen producer to prepare and submit the semi-annual report to Licensor. When using a non-preapproved producer, Licensee further agrees that it will prepare and submit to Licensor an independent semi-annual report for each reporting period.

If the Licensee produces its own stickers, labels, tags or places the Certification Mark on approved items, Licensee agrees to submit the artwork to Licensor for approval prior to printing and application. Licensee further agrees to submit to Licensor a semi-annual report of its own usage of the logo impressions during the reporting period.

(e) ONLINE, PRINT, AND APPAREL OPTIONS: By check marking desired choices below, Licensees may select additional Mark usage options at an additional annual fee.

<input type="checkbox"/>	Online
<input type="checkbox"/>	Print
<input type="checkbox"/>	Apparel
<input type="checkbox"/>	All options: Online, print and apparel

4. INSPECTIONS: To ensure compliance with the terms of this Agreement, Licensee agrees that Licensor's authorized representatives may audit and inspect the records of the Licensee's facilities and audit and inspect Licensee's operations at any reasonable time to determine compliance with the terms of this Agreement.



5. SAMPLES OF USAGE: Before Licensee commences any use or new use of the Certification Mark on plants, plant packaging containers, or other goods, it shall send a sample of the proposed use to Licensor so that Licensor can determine whether the mark is being used in a manner that complies with this Agreement. Upon request, Licensee shall provide Licensor with copies of representative advertising and promotional materials displaying the Certification Mark. Any future advertisement with the same content thereafter will be deemed approved.

6. POSITIVE USAGE: Licensee shall display the Certification Mark only in a positive manner. Licensee will not use the Certification Mark in any way that disparages the Colorado Nursery & Greenhouse Association or its services, or in any manner that would diminish or otherwise damage the Colorado Nursery & Greenhouse Association's goodwill, including, but not limited to, uses that could be deemed obscene, pornographic, violent or otherwise in poor taste or unlawful, or which purpose is to encourage unlawful activities.

7. NON-EXCLUSIVE AND NON-ASSIGNABLE LICENSE: The License granted to Licensee is non-exclusive. Licensor reserves the right to grant the same license to others, in Licensor's sole discretion. This Agreement is not assignable and Licensee shall have no right to grant sublicenses hereunder. Any attempt to assign or grant sublicenses will be a violation of this Agreement. Licensee may not prepare plant material bearing the Certification Mark for another commercial party unless that party has a valid license to use Licensor's Certification Mark or Licensor has authorized such use.

8. LICENSOR'S EXCLUSIVE OWNERSHIP: Licensee acknowledges Licensor's ownership of the Certification Mark and agrees that it will do nothing inconsistent with such ownership. Licensee agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Certification Mark other than the right to use the Certification Mark in accordance with this Agreement. Licensee agrees not to use the Certification Mark, with or without other words, as part of its trade name, without the prior consent of Licensor.

9. INDEMNITY: Licensor assumes no liability to Licensee or to third parties with respect to characteristics of the goods sold by Licensee under the Certification Mark, for failure of such goods to conform to the standards applicable to such goods. Licensee will indemnify and hold harmless the Licensor, its members and its and their respective officers, directors and agents from and against losses arising from or in connection with the sale or use of goods of the Licensee earning the Certification Mark.

10. MISUSE BY OTHERS: Licensee to use best efforts to provide to Licensor the name and address of any entity, whether it be a Licensee or non-Licensee, that engages in apparent misuse of the Certification Mark or any mark confusingly similar thereto, the fraudulent designation of sponsorship or approval by the Colorado Nursery & Greenhouse Association, the use of the Certification Mark by any non-Licensee and/or the use of the Certification Marks by any entity in any manner not in compliance with the Program whenever and wherever Licensee reasonably believes that such activity is being carried on. This duty is also applicable to Licensee itself.

11. SALE OF BUSINESS: Prior to the sale or transfer of Licensee's business or of substantially all of the assets of Licensee's business, Licensee shall notify Licensor of the proposed transfer and pay all fees then due. Provisions shall also be made for payment of anticipated taxes through closing of the proposed transfer. No License will be issued by Licensor to another person or entity using the name, location or assets of a business licensed by Licensor until all fees of Licensor, including attorney fees, are paid in full.

12. TERM AND TERMINATION: The term of this Agreement is annual, from _____, 20__ to _____, 20__. **The term shall be automatically renewed on an annual basis unless either party gives to the other party a written notice of termination of this Agreement.**

Notwithstanding the prior paragraph, the term of this Agreement automatically shall terminate for cause, immediately upon Licensor's giving written notice by mail to Licensee that any of the following breaches has occurred

- (a) Licensee has willfully or negligently misused the Certification Mark while exercising its rights or obligations under the License;
- (b) Licensee has inaccurately reported the number of impressions used;
- (c) Licensee is more than forty-five days in arrears of any payment due hereunder;
- (d) Licensee's membership with the Colorado Nursery & Greenhouse Association is not in good standing;



In the event of termination for cause, Licensee has thirty (30) days to cure. If all such breaches are cured to Licensor's satisfaction within that thirty day period, Licensor shall issue a written notice of satisfaction with cure and resumption of Licensee's participation in the Program.

Upon a breach of this Agreement by Licensee, Licensor shall be entitled to exercise any and all remedies available under law or equity, including, but not limited to, the right to injunctive relief and the right to terminate this Agreement immediately without prejudice to any other available remedies;

13. EFFECT OF TERMINATION: Upon termination or expiration of this Agreement, Licensee will immediately discontinue all use of the Certification Mark and of any name, label, logo or mark confusingly similar to the Certification Mark and destroy any and all of its plant marking, online, print and apparel materials bearing the Certification Mark. Licensee agrees that upon termination or expiration of this Agreement, the Certification Mark and the goodwill connected with that Certification Mark will be and remain the property of Licensor. Licensee is liable for the full cost of all accrued annual license fees and accrued fees for impressions produced by or for Licensee prior to the termination.

14. CHOICE OF LAW AND JURISDICTION: This Agreement and all transactions under it shall be governed by U.S. federal law and the laws of the State of Colorado, excluding its choice of law rules. The parties further acknowledge and agree that any non-contractual cause of action that either party may assert, including but not limited to trademark infringement, trademark dilution, passing off, false designation of origin, unfair competition and other non-contractual causes of action, will be governed by U.S. federal law and the law of the State of Colorado.

15. ALTERNATE DISPUTE RESOLUTION: Any dispute or controversy arising out of or relating to this Agreement, its construction or its actual or alleged breach will be decided by mediation. If the mediation does not result in a resolution of such dispute or controversy, it will be finally decided by an appropriate method of alternate dispute resolution, including without limitation, arbitration, conducted in the Denver metro area, Colorado.

The parties agree to exclusively submit any controversy or claim in any way arising from this Agreement or the parties' relationship or intellectual property (including its validity) to binding arbitration in Denver, Colorado, USA by a single intellectual property attorney. The parties agree that such arbitration will be conducted only pursuant to the Patent Arbitration Rules (PAR's) of the American Arbitration Association (AAA) modified for efficiency and to avoid the involvement of the AAA. For further efficiency, selection of the arbitrator will be made promptly by two independent and disinterested attorneys, one of which may be selected by each party. Further, in any arbitration proceeding, each party agrees that the prevailing party may be awarded its share of the arbitrator's fees and costs and its attorney's fees and costs in addition to any appropriate award.

Judgment upon an arbitration award rendered shall be entered in the highest court having jurisdiction, state or federal. The decision of the arbitration must be sanctioned by a court of law having jurisdiction to be binding upon and enforceable by the parties.

The parties stipulate that the District Court for Jefferson County, Colorado, has jurisdiction over State law causes; and the Federal District Court sitting in Denver, Colorado, has jurisdiction over federal law causes and, by ancillary jurisdiction, over accompanying State law causes.

AGREEMENT: The Licensee and Licensor, by the signatures of their duly authorized representative, indicate their acceptance of the terms of participation as indicated in this Agreement.

LICENSEE: _____
Name Title Date

LICENSOR: _____
Name Title Date