

Alpaca Fiber Cooperative of North America, Inc.



## LICENSE AGREEMENT

This is an Agreement between the Alpaca Fiber Cooperative of North America, Inc., a Colorado Cooperative Corporation, having a principle place of business at 17494 State Highway 58 North, Decatur, TN 37322 (hereinafter "LICENSOR") and \_\_\_\_\_ having a principle place of business and mailing address at \_\_\_\_\_ (hereinafter "LICENSEE").

WHEREAS, LICENSOR is the owner of exclusive rights in the Trademark **NORTH AMERICAN ALPACA** and Design which is illustrated in Appendix A of this Agreement (hereinafter referred to as "the Mark");

WHEREAS, LICENSOR is the owner of U.S. Federal Registration Number 3,957,146 for the Mark; and

WHEREAS, LICENSEE is desirous of obtaining a non-exclusive, non-transferable license to use the Mark on and/or in connection with LICENSEE'S goods that meet certain standards in relation to quality and/or materials as set forth by LICENSOR.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant. LICENSOR grants to LICENSEE a non-exclusive license, with no right to sublicense, to use the Mark on and in relation to LICENSEE'S goods so long as LICENSEE meets those certain goods standards in relation to quality and/or materials of LICENSEE'S goods and meets those certain graphic image standards in relation to the depiction of the Mark, as set forth by LICENSOR from time to time. LICENSEE warrants that it has met and will continue to meet the goods standards applicable to LICENSEE'S goods and to meet the graphic image standards applicable to LICENSEE'S depiction of the Mark, as published herein or later by LICENSOR for the entire term of this Agreement. Failure by LICENSEE to maintain the published goods standards and graphic image standards by LICENSOR shall be deemed a material breach of this Agreement and LICENSEE shall promptly, but not later than ninety (90) days, cure the breach or this Agreement shall terminate. The

applicable goods standards are set forth in attached Appendix B and graphic image standards are set forth in attached Appendix C, and it shall be understood that LICENSOR may change or modify its standards from time to time, and any such changes or modifications when published shall automatically be incorporated in this Agreement as the Appendix B or Appendix C, as the case may be, without the requirement to provide additional consideration or otherwise to re-execute this Agreement or execute an amendatory agreement.

2. Royalty. LICENSEE shall pay LICENSOR a royalty fee in the amount as set forth in attached Appendix D, and it shall be understood that LICENSOR may change or modify this royalty fee from time to time, and any such changes or modifications when published shall automatically be incorporated in this Agreement as the Appendix D without the requirement to provide additional consideration or otherwise to re-execute this Agreement or execute an amendatory agreement. In the event LICENSOR, in the reasonable exercise of its sole discretion, believes Licensee is not paying a royalty fee in compliance with this Agreement, LICENSEE shall provide LICENSOR with verification of its gross sales of all goods the Mark is used on or in connection with, as directed by LICENSOR, in order for LICENSOR to determine compliance with the royalty fee provisions of this Agreement.
3. Mark Digital Image. LICENSOR shall give LICENSEE a high-resolution digital image of the Mark on a CD after this Agreement is signed by both parties. LICENSEE shall use this digital image when depicting graphic images of the Mark. LICENSOR members will receive a 5" x 7" decal or an 8" x 10" desk plaque image of the Mark.
4. Label Laws. LICENSEE shall comply with all applicable Federal laws dealing with product materials, origin and care labels for the goods the Mark is used on and in connection with.
5. Quality Control. LICENSEE agrees that LICENSOR, in the reasonable exercise of its sole discretion, has the right to inspect and approve each use of the Mark and all goods offered under the Mark for adherence to the goods standards and graphic image standards of LICENSOR for use of the Mark and all such goods shall be under the control of LICENSOR for purposes of use of the Mark. LICENSEE shall provide LICENSOR with samples of all goods the mark is used on or in relation to and samples of all: (i) uses of the Mark on or in relation to such goods, and (ii) all raw fiber used in all goods LICENSEE uses the Mark on or in relation to, as directed by LICENSOR, in order for LICENSOR to determine compliance with the goods standards and graphic image standards for use of the Mark. In the event LICENSOR, in the reasonable exercise of its sole discretion, believes the Mark is not being used in compliance with this Agreement, LICENSEE: (i) shall provide LICENSOR with copies of all quality tests of and contact information for all suppliers of raw fiber used in all goods LICENSEE uses the Mark on or in relation to, as directed by LICENSOR, in order for LICENSOR to determine compliance with the goods standards and graphic image standards for use of the Mark, and (ii) authorizes all

suppliers of raw fiber used in goods LICENSEE uses the Mark on or in relation to, to supply LICENSOR such fiber samples, fiber tests and information as LICENSOR may reasonably request with respect to the quality and other information about characteristics of the fiber supplied to LICENSEE.

6. Indemnification/Insurance. LICENSOR assumes no liability with respect to the goods sold, offered, or services performed or advertised by LICENSEE under the Mark or in connection with any of the rights granted under this Agreement. LICENSEE shall indemnify and hold harmless LICENSOR, its agents and its employees against all claims, demands, liability, suits, actions or losses, including all reasonable expenses and attorneys' fees, incurred by or imposed on LICENSOR, its agents or its employees through claims, demands, suits or actions of third parties involving the good or services provided by LICENSEE or in connection with any rights granted under this Agreement LICENSEE shall obtain and maintain during the term of this Agreement third party general liability insurance.
7. Ownership. LICENSEE agrees that nothing in this Agreement shall give to LICENSEE any right, title or interest in the ownership or goodwill of the Mark, that the Mark and its goodwill are the sole property of LICENSOR and that any and all use by LICENSEE of the Mark shall inure to the benefit of LICENSOR. LICENSEE further agrees not to dispute the validity or ownership of the Mark or its goodwill. This Agreement and the license herein granted shall not be assignable or transferable by LICENSEE in any manner except by prior written and signed consent of LICENSOR. LICENSEE shall have no right to sub-license the Mark. If, by operation of law, or otherwise, LICENSEE is deemed to or appears to own any property rights in the Mark, LICENSEE shall, upon LICENSOR's request, execute any and all documents necessary to confirm or otherwise establish LICENSOR's rights therein.
8. Term and Termination. This Agreement shall be binding upon LICENSOR and LICENSEE upon execution by both parties and shall continue until written notice to terminate, for any reason, this Agreement is given by either party to the other, such termination to be effective at the expiration of a thirty (30) day period beginning from the date said written notice to terminate was sent. LICENSEE's termination shall only be effective pursuant to this paragraph if payment of the royalty fee as provided for in this Agreement pro-rated for the period from the most recent anniversary of this Agreement to the effective date of termination is included with the LICENSEE's written notice to terminate.
9. Effect of Termination. Upon termination of this Agreement, LICENSEE will immediately discontinue all use of the Mark and shall promptly return to LICENSOR the Mark digital image CD given to LICENSEE pursuant to this Agreement.
10. Enforcement. LICENSOR shall have the exclusive right to enforce its rights in the Mark and such enforcement shall be conducted at the sole discretion of LICENSOR. The expense of any such enforcement, including legal proceedings related thereto,

shall be paid by LICENSOR, and all recoveries from any lawsuit or settlement shall go to LICENSOR. LICENSEE agrees to promptly notify LICENSOR of any infringement of the Mark that may come to its attention and further agrees to assist LICENSOR, at the request of LICENSOR, in any lawsuit or other dispute involving the Mark.

11. Protection. LICENSOR shall have the exclusive right to obtain and maintain protection at LICENSOR's expense for the Mark with the reasonable assistance of LICENSEE at LICENSOR's request.
12. Relationship of the Parties. LICENSOR and LICENSEE agree that their relationship is that of owner and non-exclusive licensee, respectively, of the Mark. This Agreement does not establish any agency, employment, joint venture or partnership relationship between the parties. LICENSEE, its agents and its employees shall have no right or authority to act for or bind LICENSOR in any way or to sign the name of LICENSOR, or to represent that LICENSOR is in any way responsible or liable for the acts, written or verbal statements or admissions of LICENSEE.
13. Assignment. LICENSEE hereby irrevocably and unconditionally assigns and transfers to LICENSOR any and all rights that LICENSEE may have acquired with respect to the Mark through use of the Mark prior to execution of this Agreement, including without limitation all copyrights, trademark, service mark or trade dress rights, and any or all goodwill associated therewith. LICENSEE agrees to execute any documents requested by LICENSOR to evidence such assignment.
14. Modification. This Agreement may only be modified by the mutual written agreement of and signed by both parties hereto and may not be modified by electronic transmission. All previous discussions have merged into this Agreement. No oral statement shall in any manner modify or otherwise effect the terms and conditions set forth herein.
15. Waiver. Waiver by LICENSOR of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
16. Entire Agreement. The parties agree that this Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all previous communications, proposals, representations and agreements whether oral or written relating to the subject matter hereof.
17. Effect of Invalid Provision. This Agreement, to the extent possible, shall be construed so as to give validity to all the provisions hereof. Any provisions of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating any other part of this Agreement.

18. Choice of Law. This Agreement shall be construed, interpreted, and governed in accordance with the laws of the State of Tennessee without giving effect to conflict of laws and the parties irrevocably submit to the exclusive jurisdiction of the courts of Tennessee.

19. Counterparts And Electronic Transmission. This Agreement may be executed in any number of counterparts containing the signature of both parties hereto, each of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart hereof. Other than ink signing and physically delivering an original counterpart hereof, either party hereto may effect execution and delivery by ink signing each page of an original or facsimile counterpart hereof and sending a copy thereof to the other party by facsimile transmission using:

- a. telephone facsimile machine with receipt by the sender of a transmission report from the dispatching facsimile machine which confirms that the facsimile has been successfully sent, or
- b. email PDF attachment with receipt by the sender of a confirmation from the recipient or the recipient's email server that the email has been received by the recipient. Facsimile documents as provided for in this Agreement, including the signatures thereon, shall be treated in all respects as an original instrument bearing an original signature.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

LICENSOR: ALPACA FIBER COOPERATIVE    LICENSEE: \_\_\_\_\_  
OF NORTH AMERICA, INC.

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

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

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

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

Title:

Title:

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

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

APPENDIX A

**North American Alpaca**





## APPENDIX B

### GOODS STANDARDS

STATEMENT OF APPLICABLE STANDARD: The intended purpose of the Mark is to identify for consumers those goods that are made with North American alpaca fiber and that are of a certain quality. Any use of the Mark on or in relation to goods by a particular retailer, wholesaler, distributor, manufacturer, or any other party who desires use of the Mark on or in relation to goods must comply with the following standards as to quality/materials:

1. MATERIALS: For any good bearing the Mark or in relation to which the Mark is used, the Alpaca fiber content of such good must be made from 100% Alpaca fiber collected from Alpacas residing in North America.

2. QUALITY: the following quality standards apply:

- a. CONTENT: For all goods, the Alpaca fiber content of the good must be at least 60% by weight. For example, for apparel such as socks or mittens, some amount of other material is permissible to be used in the apparel such as nylon or merino wool, however the apparel must have at least 60% by weight of Alpaca fiber.
- b. ALPACA FIBER GRADE: The grade requirements for various classifications of goods is as follows:
  - i. HAND KNITTING YARN & APPAREL NEXT TO THE SKIN: The average fiber diameter of the Alpaca fiber used must be less than 27 microns in diameter. This includes, without limitation, hats scarves, sweaters and gloves.
  - ii. HOUSEWARES, SOCKS & APPAREL NOT NEXT TO THE SKIN: The average fiber diameter of the Alpaca fiber used must be less than 30 microns in diameter.
  - iii. ALL GOODS: No more than 20% of the fibers in the Alpaca fiber used in a good can be greater than 30 microns in diameter
- c. OTHER FIBER GRADE: All fiber blended with Alpaca fiber in any good must not exceed the coarseness set forth in the Alpaca Fiber Grade standard pursuant to these Goods Standards for the Alpaca fiber it is blended with in the good.

3. HIGH QUALITY: All goods bearing the Mark and the use of the Mark will be of a high standard, style, appearance and/or quality so as to reflect favorably upon the businesses of both LICENSOR and LICENSEE and the goodwill associated with the Mark.

4. USE: The Mark may not be used in any way other than on or in relation to goods as provided for in this Agreement.



## APPENDIX C

### GRAPHIC IMAGE STANDARDS

STATEMENT OF APPLICABLE STANDARD: Any use of the Mark by a particular retailer, wholesaler, distributor, manufacturer, or any other party who desires use of the Mark on or in relation to goods must comply with the following standards as to the depiction of the Mark:

1. TRADEMARK NOTICE: The mark must be depicted at all times with a legible “®” since it is Federally registered.
2. COLOR: The Mark may only be used in black and white as illustrated in Appendix A of this Agreement or with these two colors in reverse depending on which option in any given instance allows the Mark to stand out better against a particular color background on which the Mark is placed.
3. PROPORTIONS, STYLE & FONT: The Mark may only be used in the same proportions and with the same font and style as set forth in Appendix A of this Agreement and in the CD digital image of the Mark LICENSOR supplies pursuant to this Agreement. The Mark may not be animated or otherwise distorted in appearance.
4. FIRST USE: The first use of the Mark by LICENSEE must be pre-approved by LICENSOR.

## APPENDIX D

### ROYALTY FEES

STATEMENT OF APPLICABLE ROYALTY FEE: Any particular retailer, wholesaler, distributor, manufacturer, or any other party who uses the Mark on or in relation to goods must pay a royalty fee in the amount as follows:

1. \$175.00 application fee upon signing this Agreement (This application fee and subsequent renewal fees are waived for LICENSOR members in good standing, having contributed fiber in the 12-month period prior to application or renewal), plus

2. On each anniversary of this Agreement, an amount as follows:

- a. \$200.00 if LICENSEE's gross sales for the year then ended of all goods the Mark is used on or in relation to is under \$25,000.00,
- b. \$400.00 if LICENSEE's gross sales for the year then ended of all goods the Mark is used on or in relation to is over \$25,000.00 and under \$100,000.00, or
- c. \$750.00 if LICENSEE's gross sales for the year then ended of all goods the Mark is used on or in relation to is over \$100,000.00.

3. If LICENSEE is a LICENSOR member who is a non-fiber-contributing alpaca breeder and/or fiber artist (this does not include commercial milling/manufacturing operations but does include retail and hand making operations) with gross sales for the year then ended of all goods the Mark is used on or in relation to is under \$10,000.00, then the \$200.00 anniversary fee of Paragraph 2a above shall be \$100.00.

If this Agreement is terminated, LICENSEE shall pay LICENSOR the royalty fee as provided for in this Appendix pro-rated for the period from the most recent anniversary of this Agreement to the effective date of termination.