

TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2020 ("Execution Date"), by and between National Biodiesel Board, a non-profit corporation organized in the state of Iowa, with offices located at 605 Clark Avenue, Jefferson City, Missouri 65101 ("NBB"), and _____ ("Promoter") (NBB and Promoter being collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, NBB owns the trademarks "BIOHEAT," "THE EVOLUTION OF OILHEAT," "BIOHEAT DESIGN MARK," "BIOHEAT PLUS DESIGN MARK," and "BIOHEAT SUPER PLUS DESIGN MARK," attached hereto as Exhibit "A" as used in association with at least fuel oil (collectively the "Marks");

WHEREAS, Promoter provides educational materials (the "Materials") for consumers or persons in the sale, servicing, distribution, and/or use of heating oil or biodiesel identifying ASTM D6751 compliant B100 biodiesel or blends of B100 biodiesel mixed with ASTM D396 compliant heating oil (the "Blended Fuel") in the United States (the "Territory");

WHEREAS, Promoter desires to use the Marks in connection with the distribution of the Materials in the Territory; and

WHEREAS, NBB is willing to permit such use of the Marks under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the Parties, each intending to be legally bound hereby, do promise and agree as follows.

1. LICENSE GRANT. NBB hereby grants to Promoter a non-exclusive, non-sublicensable, nontransferable, license to use the Marks in connection with creating and distributing the Materials solely to promote and/or market the Blended Fuel in the Territory in accordance with this Agreement. This license is granted only for use of the Marks in association with the Materials and does not extend to any other mark, product or service. NBB grants to Promoter the right to use the Marks on the Materials. NBB hereby reserves all rights not explicitly granted under this Agreement, including NBB's right to authorize or license use of the Marks, to any third party for use in connection with any goods and services.

2. TERM OF THE AGREEMENT. This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect for ten (10) years commencing on the Execution Date. This Agreement may be terminated in accordance with the provisions of Section 10 below.

3. USE OF THE MARKS.

- A. Promoter shall strictly adhere to the trademark usage manual attached hereto as Exhibit "B."
- B. Promoter shall not use the term "BIOHEAT" standing alone. Promoter shall

ALWAYS use the terms "BIOHEAT" as an adjective, in association with a noun, such as "biodiesel," "fuel oil," "heating oil," etc.

- C. Promoter shall not use the Marks in any way that disparages NBB, or its Materials, programs, or services, or in any manner that would diminish or otherwise damage the goodwill or reputation of any NBB, including, but not limited to, uses that could be deemed to be obscene, pornographic, excessively violent, or otherwise in poor taste or unlawful, or which purpose is to encourage unlawful activities.
- D. Promoter shall not use the use the Marks in the Materials in association with products or services that do not meet the standards of Section 7 below.
- E. Promoter shall only use the Marks in the Materials in association with products or services that meet the standards of Section 7 below.
- F. When using the trademarks "BIOHEAT," "BIOHEAT DESIGN MARK," "BIOHEAT PLUS DESIGN MARK," "BIOHEAT SUPER PLUS DESIGN MARK" and "THE EVOLUTION OF OILHEAT" in association with fuel oil, Promoter shall always use the trademarks "BIOHEAT," "BIOHEAT DESIGN MARK," "BIOHEAT PLUS DESIGN MARK," "BIOHEAT SUPER PLUS DESIGN MARK" and "THE EVOLUTION OF OILHEAT" in association with the registered trademark symbol viz. Bioheat® or The Evolution of Oilheat®.
- G. All trademarks, service marks, trade names or logos (the "Marks") are the exclusive property of NBB. Promoter shall not take any action that jeopardizes NBB's proprietary rights or acquire any right in the Marks. Promoter shall not register, directly or indirectly, any trademark, service mark, trade name, copyright, company name or other proprietary or commercial right that is identical or confusingly similar to the Marks or that constitute a translation into other languages. Promoter shall use the Marks exclusively to identify the Blended Fuel.

4. AUDIT.

- A. NBB shall have the right, upon reasonable notice to Promoter, to inspect any Materials to be created or distributed by Promoter displaying any of the Marks. Promoter shall cooperate fully in providing NBB access to or assisting NBB in gaining access to Promoter's Materials. Upon request from the NBB, Promoter shall provide documentation to NBB verifying that Promoter's Materials bearing the Marks are in compliance with the terms of this Agreement.
- B. Promoter shall comply with all applicable laws and regulations in its advertising, promotion, display and use of the Marks.
- C. Should NBB provide Promoter written notice that any activity of Promoter is a violation of any provision of this Agreement, Promoter shall immediately discontinue such violation.

5. WARRANTIES AND OBLIGATIONS.

- A. NBB represents and warrants that it has the right and power to grant the licenses granted herein and that there are no other agreements with any other Party in conflict herewith. NBB does not extend any additional warranties, express or implied, other than as provided for herein.

- B. Promoter represents and warrants that it will use its best efforts to promote and market Bioheat® fuel oil.
- C. Promoter shall be solely responsible for the creation and distribution of the Materials and shall bear all related costs associated therewith.
- D. IN NO EVENT WILL NBB HAVE ANY LIABILITY WHETHER BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR BY MISREPRESENTATION OR WARRANTY OR OTHER STATUTORY, LEGAL OR EQUITABLE GROUNDS, FOR ANY THIRD PARTY CLAIMS AGAINST PROMOTER FOR LOSSES, DAMAGES OR EXPENSES.

6. SUBLICENSE. Promoter shall have no right to sublicense any rights granted to Promoter under this Agreement. Promoter may not use the Marks except as specifically authorized under this Agreement. Promoter shall use best efforts to comply with the requirement for usage of the Marks provided for hereunder. Promoter shall receive no rights or licenses to the Marks except as specifically provided for under this Agreement, during the Term of this Agreement.

7. QUALITY CONTROL AND SAMPLES FOR FUEL PROMOTERS.

- A. The license granted hereunder is conditioned upon Promoter's full and complete compliance with the marking provisions of the trademark laws of the United States, including use of the symbol "®" when Promoter uses the trademarks "BIOHEAT," "BIOHEAT DESIGN MARK," "BIOHEAT PLUS DESIGN MARK," "BIOHEAT SUPER PLUS DESIGN MARK" and "THE EVOLUTION OF OILHEAT" in association with fuel oil.
- B. The usage of the Marks in the Materials shall only be in association with biodiesel or Blended Fuel. For usage of the Marks in the Materials in association with biodiesel, the Marks in the Materials shall only be in association with biodiesel that meets ASTM specification ASTM D 6751. For usage of the Marks in the Materials in association with Blended Fuel, the Marks in the Materials shall only be in association with Blended Fuel that contains a minimum of 2% biodiesel, with the remainder of the fuel oil being fuel oil conforming to specification D396 grades No. 1 or No. 2 ultra-low sulfur heating oil.
- C. If NBB determines that the Materials created or distributed by Promoter fails to meet the above criteria, NBB will provide written notice to Promoter of this failure. Promoter shall use its best efforts to remedy any uncontested failure within a commercially reasonable time of receiving NBB's notice.
- D. NBB may request samples of the Materials from Promoter and Promoter shall be obligated to provide NBB with requested samples within thirty days of such a request.
- E. Promoter shall comply with all applicable laws and regulations in their advertising, promotion, display and use of the Marks.

8. NOTICE.

- A. Each Party will send notices required under this Agreement in writing to the other

designated Party at the above stated address or mailed by certified or registered mail, return receipt requested or delivered by a recognized national overnight courier service.

- B. Each Party will send the other Party a written notice of any change of its address.

9. OWNERSHIP OF THE MARKS.

- A. Promoter acknowledges that NBB is the owner of all rights in the Marks, any trademark applications and/or registrations thereto, and all associated goodwill. Promoter shall do nothing inconsistent with NBB's intellectual property rights in the Marks and agrees that all use of the Marks by Promoter shall inure to the benefit of NBB. Promoter shall not obtain any rights to the Marks except the specific, non-exclusive, limited license granted hereunder during the Term. Promoter agrees that nothing in this Agreement shall give Promoter any right, title or interest in the Marks other than the right to use the Marks in accordance with this Agreement. Promoter shall not register or attempt to register any of the Marks as a trademark, service mark, Internet domain name, or trade name, with any domestic or foreign governmental or quasi-governmental authority. Promoter shall not violate any of NBB's intellectual property rights in the Marks. The provisions of this Section shall survive the expiration or termination of this Agreement.
- B. Promoter shall execute any documents reasonably requested by NBB to secure protection of any of the Marks.
- C. Promoter does not license, permit or allow NBB to use any of Promoter's trademarks, copyrights, trade names or other intellectual properties (collectively, "Promoter Properties") through this Agreement. NBB must obtain Promoter's prior written consent to use any Promoter Properties.

10. TERMINATION. The following termination rights are in addition to the termination rights that may be provided elsewhere in this Agreement. Promoter may terminate this Agreement at any time for any reason, or for no reason, by written notice to NBB thereof. This Agreement shall automatically terminate ten (10) years from the Execution Date. NBB shall have the right to terminate this Agreement upon sixty (60) days written notice to Promoter. NBB shall have the ability to immediately terminate this Agreement upon written notice to Promoter in the event of any of the following:

- A. Promoter fails to continuously create and distribute Materials for one (1) year;
- B. Promoter breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Marks, and fails to cure such breach within thirty (30) days of Promoter's receipt of written notice from NBB of such breach;
- C. Promoter fails, within thirty (30) days of Promoter's receipt of written notice from NBB, to discontinue the distribution or sale of any Materials that do not contain appropriate use of the registered trademark symbol in association with the Marks;
- D. Promoter breaches any material clause of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice of such breach from NBB;
- E. Promoter fails, within ten (10) days of receiving written notice as outlined in

Section 4(C) above, to discontinue the violation(s) of this Agreement outlined in such written notice.

11. POST TERMINATION RIGHTS. All of the rights of Promoter under this Agreement shall automatically terminate upon termination of this Agreement, and shall revert back NBB. Upon termination of this Agreement, Promoter shall immediately discontinue all use of the Marks, at no cost whatsoever to NBB. Upon termination of this Agreement for any reasons whatsoever, Promoter shall immediately return to NBB all material associated with any of the Marks including, but not limited to, all Materials, artwork and the like, at no cost to NBB.

12. RESTRICTIONS.

- A. This license is non-exclusive;
- B. This license is geographically restricted to the Territory, if specified;
- C. Promoter shall not create or distribute Materials via the use of deceptive, misleading, or fraudulent marketing practices;
- D. Promoter shall, in all of Promoter's uses of the trademarks "BIOHEAT," "BIOHEAT DESIGN MARK," "BIOHEAT PLUS DESIGN MARK," "BIOHEAT SUPER PLUS DESIGN MARK" and "THE EVOLUTION OF OILHEAT" in association with fuel oil, indicate clearly that those trademarks are registered with the U.S. Patent and Trademark Office by using the "®" designation;
- E. Promoter shall, before the use of any design incorporating the Marks, submit that design to the NBB for its prior written approval;
- F. Promoter shall submit, upon NBB's request, one exemplar of each current piece of the Materials;
- G. Promoter shall not interfere with the use of the Marks by NBB or any known member of NBB; and
- H. NBB has the right at its own expense to inspect and review all Materials created and distributed in connection with the Marks as provided in Section 4 above.

13. INFRINGEMENTS.

- A. Promoter shall notify NBB within a reasonable time of learning of any infringement of the Marks. Promoter shall have the right, in its discretion, to institute and prosecute lawsuits against third persons for infringement of the rights licensed in this Agreement. In no event shall Promoter take any action to prevent or hinder NBB from protecting the Marks.
- B. NBB may also institute and prosecute a lawsuit involving the Marks. Any lawsuit shall be prosecuted solely at the cost and expense of NBB and all sums recovered in any such lawsuits, whether by judgment, settlement or otherwise, shall be retained by NBB.
- C. Upon request of NBB, Promoter shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. NBB shall reimburse Promoter for the expenses incurred as a result of such cooperation.

14. INDEMNITY. Each Party agrees to defend, indemnify and hold the other Party

and its officers, directors, and employees harmless against all costs, expenses and losses (including reasonable attorney fees and costs) incurred through claims of third parties against the Party based on the other Party's breach of any representations or warranties contained herein or as a result of any of the other Party's actions or inactions.

15. EQUITABLE RELIEF. Promoter recognizes and acknowledges that a breach by Promoter of this Agreement may cause NBB irreparable damage that cannot be readily remedied in monetary damages in an action at law, and may, in addition thereto, constitute an infringement of the Marks. In the event of any default or breach by Promoter that could result in irreparable harm to NBB or cause some loss or dilution of NBB's goodwill, reputation, or rights in the Marks, NBB shall be entitled to seek immediate injunctive relief to prevent such irreparable harm, loss, or dilution in addition to any other remedies available.

16. JURISDICTION/DISPUTES. This Agreement shall be governed by the laws of the State of Iowa with jurisdiction and venue being in Polk County, Iowa. The Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to them.

17. ASSIGNMENT. The license granted hereunder is personal to Promoter and shall not be assigned by any act of Promoter or by operation of law unless in connection with a transfer of substantially all of the assets of Promoter or with the consent of NBB. NBB will notify Promoter in advance of any assignment of its rights and obligations under this Agreement.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior understandings, agreements, discussions, or representations, whether written or oral, with respect to such subject matter. This Agreement cannot be varied, modified, waived, or amended except in a writing executed by both Parties to this Agreement. Each Party to this Agreement acknowledges that it has not executed it in reliance on any promise, representation, inducement, or warranty that is not contained herein.

19. WAIVER. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. A waiver by either of the Parties of any of the covenants, conditions, or agreements to be performed by the other hereunder shall not be construed to be a waiver of any succeeding breach thereof. All remedies provided for in this Agreement shall be cumulative, and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity or otherwise.

20. NO AGENCY. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the Parties.

21. SEVERABILITY. If any provision of this Agreement is held invalid, void, or unenforceable under any applicable statute or rule of law, it shall to that extent be deemed omitted, and the balance of this Agreement shall be enforceable in accordance with its terms.

22. HEADINGS NOT CONTROLLING. The headings in this Agreement are for reference purposes only and shall not be construed as a part of this Agreement.

23. CONSTRUCTION. No provision of this Agreement shall be construed in favor of or against any Party on the ground that such Party or its counsel drafted the provision. Any remedies provided for herein are not exclusive of any other lawful remedies that may be available to either Party. This Agreement shall at all times be construed so as to carry out the purposes stated herein.

24. SURVIVAL. In the event this Agreement is terminated, the confidentiality provisions provided for hereunder shall survive and continue in full force and effect according to their terms.

25. COUNTERPARTS. This Agreement may be executed in several counterparts, all of which when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

For NBB:

For Promoter:

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

Exhibit "A"

BIOHEAT®

THE EVOLUTION OF OILHEAT®



Exhibit "B" - Trademark Usage Manual

**PROPER USE OF NATIONAL BIODIESEL
BOARD TRADEMARKS**

Trademark rights are extremely valuable, but require constant monitoring to prevent them from becoming generic and moving into the public domain. To maintain rights to the trademarks "BIOHEAT," "THE EVOLUTION OF OILHEAT," the "BIOHEAT DESIGN MARK," the "BIOHEAT PLUS DESIGN MARK," and the "BIOHEAT SUPER PLUS DESIGN MARK" (collectively, the "Marks") the National Biodiesel Board, and you as a promoter of those Marks, must not only use the marks correctly, but must ensure that all of your employees use the Marks correctly as well. Incorrect use of trademarks may lead to lessened protection or, in some cases, to an abandonment of all rights in the trademark. In numerous cases, the United States Supreme Court has held that lack of proper oversight by their owners have led several valuable trademarks to become lost to the public domain. *Bayer Co. v. United Drug Co.* (finding "aspirin" generic), *DuPont Cellophane Co. v. Waxed Materials Co.* (finding "cellophane" generic).

A. CONSEQUENCES OF IMPROPER USE

A trademark is a brand identifier that lets consumers know that a particular good or service comes from a particular source. If a trademark becomes synonymous, in the mind of the public, with the good or service it describes, it loses its value as a brand identifier. Once this happens, competitors are free to use the trademark on their own goods and services. Any activity by the owner that causes a trademark to lose its significance as an indication of origination of the good or service may cause the owner to be stripped of valuable rights.

Even extremely valuable, well-known trademarks can be lost through improper use. The following is just a partial list of famous trademarks that have lost exclusive rights through a failure of the trademark owner to properly monitor their usage:

Zipper	Nylon	Trampoline	Cellophane
Thermos	Raisin Bran	Aspirin	Escalator
Kerosene	Corn Flakes	Yo-yo	

It is important that every employee and promoter uses the National Biodiesel Board's Marks correctly. For example, it is important that Promoter not define Bioheat® as being heating oil. Such usage generalizes the term in the eyes of consumers and invites competitors to adopt the Bioheat trademark for their own use. Luckily, proper use of the Marks can prevent valuable trademarks like the Bioheat trademark from becoming generic.

B. PREFERRED FORMS OF USE

Consistency is the key to proper use of trademarks and service trademarks. The following is a list of some of the proper ways to use the Marks. A small effort to use the Marks consistently, according to a specific usage program, could prevent dishonest competitors from using the Marks in association with poor quality Materials that would diminish the value of the Marks in the eyes of end users.

1. Always Use Trademarks As Adjectives.

Never use the Marks as nouns. Always use the Marks along with the generic name of the good or service, to indicate to consumers that the Marks are indeed trademarks. Burger King hamburgers are hamburgers that come from Burger King Corporation. McDonald's® hamburgers are hamburgers that come from McDonald's Corporation. "McDonald's® hamburgers" includes the federally registered trademark symbol "®" because the phrase describes the source of the hamburgers. "McDonald's Corporation" does not include the federally registered trademark symbol "®" because McDonald's in this context describes the company itself, not a good or service marketed by the company. To avoid losing rights to trademarks, always use trademarks along with the nouns they modify e.g. (Bioheat® heating oil, etc.).

Improper use of a trademark by an owner, consumer, or competitor, such as using the trademark as a noun rather than an adjective, may lead to the trademark becoming generic and others being able to use the trademark with impunity. Never use, or allow anyone else to use, trademarks as the definition for goods or services not originating with trademark owner. A simple test to decide if the trademark is being used correctly is to remove the trademark from the sentence. If the sentence still makes sense with the trademark removed, the trademark is likely being used correctly.

Incorrect: Bioheat s a green heating oil.

Is a green heating oil.
(Makes no sense with trademark removed)

Correct: Bioheat heating oil is a green alternative to wood pellets.

Heating oil is a green alternative to wood pellets. (Makes sense with trademark removed)

2. Always Capitalize at Least the First Letter of Each Trademark.

Failure to capitalize the Marks, or otherwise differentiate the trademark from surrounding words, may lead the general public to believe the Marks are simply descriptive words rather than trademarks. Over time such use could lead to the Marks becoming generic and rights in the Marks being lost. Capitalize at least the first letter of the Marks. It is also acceptable to write the Marks using all capital letters.

3. Always Apply the Appropriate Notice to Trademarks.

a. Federally registered trademarks.

"BIOHEAT" and "THE EVOLUTION OF OILHEAT" are federally registered trademarks. If a trademark is registered with the United States Patent and trademark Office, there are three choices for appropriately designating the trademark as being a federally registered trademark:

"Bioheat Registered in U.S. Patent and Trademark Office"

"Bioheat Reg. U.S. Pat & Tm. Off."

"Bioheat®"

The foregoing designations are for federally registered trademarks. If a trademark is only registered at the state level, the owner may not use any of the foregoing designations. While the ® is the most common designation, all of the foregoing designations are acceptable. Place federal registration notices at the upper right-hand corner of the trademark or, alternatively, a dagger or asterisk may be placed at the right hand corner and the registration notice may be placed at the bottom of the page as a footnote. Remember, for federally registered trademarks, DO use one of these three designations to inform the general public of the mark's federal registration. If a trademark does not have a federal registration, DO NOT use any of the foregoing three designations. Such a misrepresentation may lead the United States Patent and Trademark Office to refuse a later attempt to obtain a federal registration. More importantly, falsely marking a non-federally registered trademark can constitute fraud.

b. Non-federally registered trademarks.

For a trademark that has not yet received federal registration or for a federally registered trademark used in association with goods or services other than those identified in the federal registration its registered notice should still be given that the trademark is a trademark or service trademark. For instance, when using the Bioheat trademark in association with heating oil, use the registered trademark symbol i.e. ("Bioheat® heating oil"), but when using when using the Bioheat trademark in association with promotional items, use the general TM designation i.e. ("Bioheat™ keychains"). The TM is used to inform the public simply that the owner views the term, as used, as a protectable trademark. Owners have at least three options for applying notice to a non-federally registered trademark. These options include placing the phrase "trademark of xyz Inc.," the word "trademark," or the letters TM in small capital letters near the upper right-hand portion of the trademark. Similarly, for a service trademark "service trademark of xyz Inc.," "service trademark," or SM in small capital letters may be used. While there is no requirement that the notice be given at the right hand portion of the trademark, this is the most typical placement of such a notice, and it is where consumers and competitors most often look for notice of rights in a trademark.

3. Distinguish Trademarks from Surrounding Words.

To protect a trademark or service trademark in a letter or communication, the Marks may be placed in all capital letters, italicized, or placed in a particularly distinguishing font to differentiate the trademark from the adjoining words. Under no circumstances should the Marks be used in lower case letters in the same font as the adjoining words. Such use could lead to the Marks becoming generic and rights in the trademark being lost.

4. Use Trademarks Consistently.

Although variety is the spice of life, such is not the case in the use of trademarks. Use the Marks consistently, as designated by the National Biodiesel Board. Do not design your own logo or color scheme. Always spell the Marks the same way. Do not use trademarks in possessive or hyphenated in combination with other words. Do not use a plural trademark in the singular or a singular trademark in the plural. Consistently used trademarks are better able to differentiate goods from those of a competitor, thereby building a stronger, more valuable trademarks.

5. Us Use Trademarks Appropriately in Internal Communications.

Oddly enough, many problems with trademarks becoming generic originate at home. Companies that frequently use trademarks in internal communications may be tempted to develop shorthand, wherein the product name is eliminated and the trademark is used alone, with the product name being assumed. As noted above, never refer to a product or service by the trademark alone. Always use the Marks with the name of the product or service.

C. CONCLUSION. In all speech, invoices, and written correspondence, use the Marks according to the aforementioned rules. Demand Promoter, competitors and media outlets use the Marks appropriately. Trademark protection starts at home. If you do not respect the Marks within your own organization, your license to use the Marks will be terminated by the trademark owner.

I understand and agree to abide by this Trademark Usage Manual

Promoter

By

(type or print name)

Date: _____