

THE STANDARDIZED RECYCLING LABEL LICENSE AGREEMENT

THE STANDARDIZED RECYCLING LABEL LICENSE AGREEMENT (the “Agreement”) is made effective as of _____ (the “Effective Date”), by and between Recycle Across America, a Minnesota nonprofit corporation with offices at 4337 Wilshire Blvd., Mound, MN 55364 (“RAA”) and Indian River County Solid Waste Disposal District (SWDD), a dependent special district of Indian River County, Florida with offices at 1801 27th Street, Vero Beach, Florida 32960 (“Licensee”).

1. **Selected License Options.** During the Term, RAA will, as further described in and subject to this Agreement, including the restrictions set forth in Section 2 of Exhibit A, General Terms and Conditions (the “Terms and Conditions”), grant a limited license to Licensee to print and use an unlimited number of standardized labels for Licensee’s residential carts, multi-family complexes, public spaces, government buildings, drop-off centers and dumpsters. In consideration for such license, Licensee will pay RAA the following Fees:

1.1. **Fees.**

1.1.1. **One-time Fee:** \$.01 per resident: [**\$1,549**]. The One-time Fee includes:

- Three (3) custom designed Labels that may include Licensee’s logo and website
- Three (3) PSA Assets in PDF to print and distribute locally
- A draft press release for Licensee to share regarding its implementation and use of the Labels
- Publicity on RAA’s website of your implementation and use of the Labels (Licensee’s name listed)

1.1.2. **Annual Fee:** **\$250**, invoiced [twelve (12) months after the Effective Date, and then each twelve (12) months thereafter]. The Annual Fee includes:

- PSA Assets, that are new or updated by RAA, in PDF to print and distribute locally. To clarify, if Licensee wishes to make any changes to the new or updated PSA Assets, such changes may be subject to the Additional Design Fee.

1.1.3. **Additional Design Fee:** **\$100**, per each additional modification, due immediately upon request, for each request by Licensee to modify the Labels and PSA assets.

2. **Agreement.** Terms and Conditions are attached to and hereby made part of this Agreement. All capitalized terms not defined elsewhere in this Agreement are defined in Section 1 of the Terms and Conditions.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

RECYCLE ACROSS AMERICA

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:
Jeffrey R. Smith, Clerk of Court and Comptroller

Deputy Clerk

(SEAL)

**SOLID WASTE DISPOSAL DISTRICT
INDIAN RIVER COUNTY, FLORIDA**

By: _____
Susan Adams, Chairman

Date: _____

APPROVED:

By: _____
Jason E. Brown, County Administrator

**APPROVED AS TO FORM AND
CORRECTNESS:**

By: _____
Dylan Reingold, County Attorney

EXHIBIT A TO STANDARDIZED RECYCLING LABEL LICENSE AGREEMENT

General Terms and Conditions

1. **Definitions.** Capitalized terms not defined elsewhere in this Agreement are defined as follows:
 - “Fees” means collectively the One-Time Fee, the Annual Fee and any Additional Design Fees set forth on page 1 of this Agreement.
 - “Labels” means the standardized recycling label artwork and images developed and distributed by RAA.
 - “Program” means the standardized recycling label initiative developed by RAA for the promotion and improvement of recycling.
 - “PSA Assets” means the public service announcement materials developed by RAA for the Program.
 - “RAA Content” means the Labels and the PSA Assets.
 - “RAA Marks” means all trademarks owned by RAA, including Recycle Across America, and the logos associated with the foregoing trademarks.

2. **License.**
 - (a) **License Grant.** RAA hereby grants Licensee a limited, non-exclusive, non-transferable, non-sublicensable license during the Term to reproduce, display and distribute the RAA Content solely in connection with the marketing and promotion of the Program within Licensee’s municipality. In connection with the foregoing, Licensee may use the RAA Content on the applicable materials for the Selected License Options relating to the Program within Licensee’s jurisdiction, provided that (i) except for any modifications we make at your request pursuant to Section 2(d) below, any use of the RAA Content conforms with the design and layout of the original RAA Content as provided to Licensee by RAA and with all specifications provided by RAA to Licensee from time-to-time; (ii) all use of the RAA Content inures to the benefit of RAA; (iii) RAA will be entitled to review and inspect all use of the RAA Content by Licensee; and (iv) Licensee will promptly comply with all of RAA’s reasonable requests to modify or cease any or all use of the RAA Content. Except as expressly set forth in this Agreement, RAA retains all right, title and interest in and to the RAA Content, and all intellectual property rights relating thereto.

 - (b) **Third Party Printers.** Notwithstanding anything in this Agreement, Licensee may authorize a third party to print and reproduce RAA Content solely on behalf and for the benefit of Licensee for Licensee’s use pursuant to this Agreement. Licensee will cause any such third party to comply with the terms and conditions of this Agreement and Licensee will be responsible for all acts and omissions of any such third party with respect to the RAA Content. Additionally, Licensee will require the third party to sign the Printing Agreement attached as an addendum to this Agreement.

 - (c) **Restrictions.** Licensee will not, and will not authorize or permit any third party to, reproduce, display, distribute, create derivative works of, modify or otherwise use the RAA Content except as expressly set forth in this Agreement. Furthermore, Licensee will not:
 - (i) modify, remove or use any images or photos included in the RAA Content;
 - (ii) use any branded material (e.g., a Coke can) in connection with the RAA Content;
 - (iii) add any images to any of the RAA Content;
 - (iv) modify the colors of any of the RAA Content; or
 - (v) modify any of the text of the RAA Content, including the RAA information footer on the RAA Content.

(d) **Modifications.** Notwithstanding anything in this Agreement, Licensee may request modifications to the RAA Content solely to:

- (i) add Licensee's logo in the designated space in the Labels and/ or the PSA Assets;
- (ii) add or remove additional language translations (e.g., to make the RAA Content bilingual) in the designated space in the RAA Content;
- (iii) adjust the size of the Labels to fit Licensee's needs, provided that the shape and proportion of the Labels is not altered;
- (iv) adjust the size of the PSA Assets to fit Licensee's needs, provided that the PSA branding standards are maintained; or
- (v) include a local celebrity in the PSA Asset.

Requests for modifications to the RAA Content must be approved by RAA of which will not be unreasonably withheld and will be made by RAA only. Each modification may be subject to Additional Design Fees as described in Section 1 of the Terms and Conditions. RAA does not authorize Licensee to make any modifications except as expressly provided herein.

3. **Payments.**

(a) **Fees.** Licensee will pay RAA the One-time Fee upon execution of this Agreement and the Annual Fee within thirty (30) days of Licensee's receipt of an invoice from RAA. Licensee agrees to pay any Additional Design Fees, as applicable. In the event that Licensee fails to timely make any payment to RAA which is due under this Agreement, such outstanding amount will bear interest at the rate of one and one half percent (1.5%) per month or the highest percentage allowed by applicable law, whichever is lower.

(b) **Taxes.** All Fees are exclusive of taxes, levies, duties, governmental charges or expenses and will be made in United States dollars. In addition to the Fees and expenses specified in this Agreement, Licensee is solely responsible for and will pay (or reimburse RAA for) all withholding, value added and sales taxes due, except for taxes on RAA's income, if any.

4. **Confidential Information.** "**Confidential Information**" as used in this Agreement means any information, whether tangible or intangible, maintained in confidence by a party, including confidential or proprietary information of third parties that such party has been authorized to receive. Each party receiving Confidential Information of the other party (the "**receiving party**") will not (i) disclose or make available any Confidential Information of the other party (the "**disclosing party**") in whole or in part to any third parties other than its employees who have a legitimate business reason to receive such Confidential Information for the purposes of this Agreement and who are bound by similar restrictions on the use and disclosure of confidential information; or (ii) use, exploit, copy, reduce to writing or otherwise record the disclosing party's Confidential Information except in connection with the strict purposes of this Agreement. The foregoing obligations will not apply to information that (a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available to the public; (b) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (c) is developed independently by the receiving party without unauthorized use of or reference to any of the disclosing party's Confidential Information; (d) is approved by the disclosing party for disclosure without restriction, in a written document executed by a duly authorized officer of the disclosing party; or (e) required by law.

5. **Term and Termination.**

(a) **Term.** The term of this Agreement (the "**Term**") will begin on the Effective Date and will continue for an initial period of one (1) year. Thereafter, this Agreement will automatically renew for additional one (1) year periods thereafter unless a written notice of non-renewal is provided by one party to the other party thirty (30) days prior to the applicable anniversary of the Effective Date.

(b) **Termination.** Either party may terminate this Agreement upon thirty (30) days written notice if the other party materially breaches this Agreement and fails to cure such breach within such thirty (30) day period.

(i) **TERMINATION IN REGARDS TO F.S. 287.135:** RAA certifies that it and those related entities of RAA as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, RAA certifies that it and those related entities of RAA as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

(ii) **LICENSEE** may terminate this Contract if RAA is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

(iii) **LICENSEE** may terminate this Contract if RAA, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

(c) **Obligations Upon Termination.** Upon the expiration or termination of this Agreement for any reason, all licenses granted under this Agreement will terminate immediately and Licensee will cease all use of the RAA Content (except that Licensee may continue to use the existing Labels). Licensee further agrees to destroy, or return if at RAA's direction, any digital files of the RAA Content.

(d) **Survival.** Section 2 of the signature page, and Sections 1, 4, 5(c), 5(d), 6, 7 and 8 of these Terms and Conditions and all payment obligations arising prior to the expiration or termination of this Agreement will survive the expiration or termination of this Agreement.

6. **Disclaimer of Representations and Warranties.** Each party represents and warrants that it has all right and authority to enter into this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, RAA MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR ARISING BY COURSE OF DEALING, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, IN CONNECTION WITH THE RAA CONTENT OR ANY RELATED PRODUCTS OR SERVICES PROVIDED TO LICENSEE HEREUNDER.

7. **Limitations on Liability.**

(a) EXCEPT WITH RESPECT TO BREACHES OF SECTIONS 2, 3 OR 4 OF THESE TERMS AND CONDITIONS, IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE TO THE OTHER PARTY (NOR TO ANY THIRD PARTY CLAIMING THROUGH SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING LOSS OF PROFITS, ANTICIPATED PROFITS, REVENUES,

ANTICIPATED SAVINGS, OR GOODWILL OR BUSINESS OPPORTUNITY) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EXCEPT WITH RESPECT TO BREACHES OF SECTIONS 2, 3 OR 4 OF THESE TERMS AND CONDITIONS, IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE DIRECTORS', OFFICERS', EMPLOYEES', OR AGENTS' COMBINED AGGREGATE LIABILITY HEREUNDER TO THE OTHER PARTY OR ANY THIRD PARTY CLAIMING THROUGH SUCH PARTY FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS PAID OR PAYABLE TO RAA UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

(b) THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF AN AUTHORIZED REPRESENTATIVE OF THE PARTY RELYING ON THIS LIMITATION OF LIABILITY HAD BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. LICENSEE ACKNOWLEDGES THAT RAA COULD NOT MAKE THE RAA CONTENT AVAILABLE ON THE TERMS SET FORTH IN THIS AGREEMENT IF RAA'S LIABILITY WAS NOT LIMITED AS SET FORTH IN THIS AGREEMENT.

8. **General Terms.**

(a) **Independent Relationship of the Parties; No Authority to Bind Other Party.** The parties are and intend to be independent contractors. Neither party has the authority to bind or commit the other party to any contract or obligation whatsoever, and neither party will represent or hold itself out as having any right or authority to do so.

(b) **Assignment.** Except as expressly set forth in this Agreement, Licensee may not assign, transfer or convey this Agreement (in whole or in part) or any of its rights under this Agreement to any third party without the prior written consent of RAA and any attempted assignment, transfer or conveyance without such consent will be void and of no force or effect.

(c) **Successors and Assigns.** The terms, conditions and obligations of this Agreement will inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

(d) **Notices.** Any notice required or permitted to be given under this Agreement will be deemed given: (i) when delivered personally to the party to receive such notice; or (ii) 5 days after mailing by express courier service, fully prepaid, addressed as herein provided, or upon actual receipt of such mailing, whichever will first occur. All notices will be addressed to the parties at the addresses set forth on the cover page to this Agreement or to such other address as any party may notify the other party of in a writing delivered in accordance with this section.

(e) **Governing Law.** This Agreement will be governed under the laws of the State of Florida, United States, without regard to its conflicts of law provisions.

(f) **No Waiver.** The failure of either party at any time to require performance of any provision of this Agreement or to exercise any right provided for herein will not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by a party of any breach of any provision of this Agreement or of any right provided for herein will be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

(g) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted so as to best accomplish

the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement will remain in full force and effect.

(h) Rules of Interpretation. As used in this Agreement, the word “or” is not exclusive and the words “including” or “include” are not limiting.

(i) Amendment. This Agreement may not be amended except by a written agreement executed in ink by both parties.

(j) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between such parties.

9. **Public Records Compliance.**

(a) Indian River County is a public agency subject to Chapter 119, Florida Statutes. RAA shall comply with Florida's Public Records Law. Specifically, RAA shall:

(i) Keep and maintain public records required by the County to perform the service.

(ii) Upon request from the County’s Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if RAA does not transfer the records to the County.

(iv) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of RAA or keep and maintain public records required by the County to perform the service. If RAA transfers all public records to the County upon completion of the contract, RAA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If RAA keeps and maintains public records upon completion of the contract, RAA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

(b) IF RAA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO RAA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

(c) Failure of RAA to comply with these requirements shall be a material breach of this Agreement.