

NON-EXCLUSIVE SUPER-GIY LICENSE AGREEMENT

This is a Non-Exclusive License Agreement for Ecovative Intellectual Property (the "Agreement") dated [DATE] 2021 (the "Effective Date") by and between:

Ecovative Design LLC, a New York limited liability company having a principal place of business at 70 Cohoes Avenue, Green Island, New York 12183 ("Ecovative"), and

[Name], [type of company], having a principal place of business at [Address] ("You" or "Your").

1. Licensed Intellectual Property

Ecovative owns and licenses certain patents, technology, know-how and other intellectual property that is useful for producing a self-supporting composite material comprising a substrate of discrete particles and a network of interconnected mycelia cells to create mycelium-based products, including technology developed by Ecovative as well as improvements to such technology developed by Ecovative licensees to the extent such licensees are obligated to assign ownership or rights in such technology to Ecovative (collectively, the "Ecovative IP"). The Ecovative IP that is licensed to You pursuant to this Agreement is comprised of the patents, technology, know-how and other intellectual property rights described in Schedule A to this Agreement (the "Licensed IP").

2. License Grant and Licensed Products

a. **Grant.** Ecovative grants You a non-exclusive, non-transferable and non-sublicensable license (the "License Grant") during the Term to use the Licensed IP to design, produce, manufacture, market and sell products using the Licensed IP in the Field of Use and Territory described in Schedule B, as may be amended by written agreement of the parties from time to time (the "Licensed Products").

b. **IP Ownership.** Ecovative will retain ownership of all its intellectual property rights. You acknowledge and agree that no intellectual property or ownership rights whatsoever are transferred to You under this Agreement. You agree that any improvements You may make or rights You may develop in Licensed IP or any methods used for creating, growing, or developing materials using mycelium (collectively, "Improvements") will accrue to the sole benefit of Ecovative and shall be deemed Licensed IP. You hereby irrevocably grant, transfer and assign all right, title, ownership and interest in and to any Improvements to Ecovative and its successors, assignees and/or licensees, provided however that the License Grant shall include a license to use any such Improvements during the Term. You agree to take such actions that are reasonably needed, at Ecovative's expense, to assign such Improvements to Ecovative. You will disclose any such Improvements to Ecovative in writing no later than ten (10) days after reasonably concluding that such Improvement has been identified. You agree that You will not do anything Yourself or assist any other party to do anything that would infringe upon, violate, damage, dilute, harm or contest the rights of Ecovative in and to Licensed IP. Any novel designs, drawings, schematics or models for Licensed Products that You develop belong to You as Your "Design-Related Intellectual Property." Design-Related Intellectual Property refers to the shape, texture, color or other

design elements of any Licensed Products You make; it shall not include the Licensed IP itself or any methods used for creating, growing, or developing materials using mycelium.

c. **Excluded Fields.** The License Grant specifically excludes the use of Licensed IP to create materials in the excluded fields listed in Schedule B (the “Excluded Fields”).

d. **Additional Exclusions and Restrictions.** At any time upon notice to You, Ecovative has the right to further limit the Field of Use and/or Territory during the Term by unilaterally amending Schedule B in the event Ecovative executes a license agreement with a third-party granting such party exclusive rights with respect to any portion of the Field of Use in the Territory.

3. Term

This Agreement is for a term of one (1) year from the Effective Date (the “Initial Term”), and shall automatically renew for subsequent one (1) year periods (each, a “Renewal Term” and together with the Initial Term, collectively the “Term”); provided that either may terminate this Agreement at any time upon not less than sixty (60) days notice to the other party gives, or as terminated earlier pursuant to Section 6.

4. Royalties; Royalty Payments; Reporting and Audit Rights

a. **Royalties.** Commencing on the Effective Date, You shall pay Ecovative, on a quarterly basis, royalties of seven percent (7%) of all Net Sales of the Licensed Products (“Royalties”). “Net Sales” means the Total Sales less: (i) credits for claims, allowances, retroactive reductions or returned goods granted to a third party within thirty (30) days of sale of the Licensed Product to such third party; (ii) prepaid freight; (iii) sales taxes actually paid in connection with the sale that are not recovered or offset by You (i.e., VAT) and (iv) products purchased directly from Ecovative. “Total Sales” means the sum of:

- i. 100% of all monies paid to You from third-parties for all sales of Licensed Products where at least 80% of the materials used in the product (by volume) are produced using Licensed IP (e.g., where the Licensed IP has been used to make products such as boards or packaging materials); plus
- ii. 20% of all monies paid to You from third-parties for all sales of Licensed Products where less than 80% of the materials used in the product (by volume) are produced using Licensed IP (e.g., where the Licensed IP has been used to create a component of a larger product sold by You, such as where You make and sell an item of furniture that includes that component).

Royalties will be due within thirty-one (31) days of the end of each calendar quarter in which Licensed Products are sold. In the event of late payment, You will pay interest on a monthly basis on any delinquent amount at an annual rate of twelve percent (12%) compounded monthly.

c. **Currencies.** All amounts payable to Ecovative pursuant to this Agreement shall be paid in U.S. Dollars via electronic funds transfer to the account designated by Ecovative. Net Sales or other amounts that need to be converted into U.S. Dollars shall be calculated on the date payment is made by reference to the Interbank Rate for the day prior to the payment date as published on the currency converter on OANDA.com (or any successor thereof).

d. **Reporting.** Within fifteen (15) days following the end of each calendar quarter, and regardless of whether You have generated any Royalties during such quarter, You will provide Ecovative with reports regarding Your sales of Licensed Products in substantially the form attached as Schedule C hereto (the "Reports"). Such Reports shall include: (i) the gross quantity of Licensed Products sold within each market segment within the Field of Use; (ii) total sales invoiced by You within each market segment within the Field of Use; (iii) the Net Sales calculation for such period, including a detailed breakdown of all information required to determine the calculation of Net Sales; (iv) the total amount due under this Section 4 for such quarter; (v) any taxes which are withheld or otherwise paid by You.

e. **Audit Rights.** During the Term and for a period of three (3) years thereafter (the "Audit Period"), You will maintain all books and records that may be relevant to Your use of the Licensed IP, including without limitation, those relating to Your manufacture, marketing, distribution and sale of Licensed Products. Ecovative shall have the right, no more than once in each calendar year, during business hours and upon reasonable notice, to audit and inspect those portions of Your books and records that relate to Your manufacture, marketing, distribution and sale of Licensed Products during the period beginning on the Effective Date or the date of the most recent audit hereunder, for the sole purpose of ensuring Your compliance with this Agreement. You shall remit any underpayment determined by such audit within fifteen (15) days notice thereof by Ecovative. In the event that any inspection reveals a discrepancy of greater than five percent (5%) of the Royalties paid during the period under audit, then in addition to any other remedies available to Ecovative under this Agreement, You will be responsible for the costs of such inspection plus interest on the underpayment of Royalties at an annual rate of twelve percent (12%) compounded monthly.

5. Taxes

All payments under this Agreement are exclusive of taxes and duties. You shall be fully responsible for the payment of any tax or duties in connection with the payments required under Section 4. You shall indemnify and hold Ecovative harmless from any tax liability owed to any governmental authority in connection with Your manufacture, distribution, sale or other use of the Licensed Products. In the event you are required to withhold or deduct any taxes or duties on payments due to Ecovative hereunder, then the total amount of such payment shall be grossed up such that the amount actually received by Ecovative is the amount calculated pursuant to this Agreement without reference to such tax or duty.

6. Termination

- a. **Without Cause.** Either party may terminate this Agreement pursuant to Section 3 of this Agreement without cause.
- b. **For Cause.** Either party may terminate this Agreement for the other party's material breach hereof by providing thirty (30) days' written notice to the breaching party.
- c. **Insolvency.** Either party may immediately terminate this Agreement upon written notice to the other party in the event that the other party: (i) becomes insolvent or is unable to pay its debts as they mature; (ii) makes an assignment for the benefit of its creditors; (iii) seeks relief, or if proceedings are commenced against such other party or on its behalf, under any bankruptcy, insolvency or debtor's relief law; or (iv) such party is liquidated or dissolved.
- d. **Consequences of Termination.** Promptly upon termination of this Agreement for any reason, You shall either return or destroy the originals and all copies of the Licensed IP and certify in writing to Ecovative that the Licensed IP has been returned or destroyed provided that, subject always to the payment of Royalties, for a period not to exceed forty-five (45) days from the effective date of termination, You shall be entitled to sell off all existing Licensed Products that have been manufactured prior to termination . Within fifteen (15) days of the effective date of such termination (the "Termination Date"), you shall provide to Ecovative a Report for the portion of the calendar quarter within which the Termination Date occurs, accompanied by payment of all Royalties calculated therein and/or any other payments due and owing as of the Termination Date. All rights granted to You hereunder, including the right to practice the Licensed IP, shall terminate on the Termination Date.

7. Restrictions on Use

You shall not, and shall not permit any third-party to:

- (i) change or modify the Licensed IP in any respect except for changes made at Ecovative's written direction, or with Ecovative's written consent;
- (ii) copy, reproduce, recompile, decompile, disassemble, reverse engineer or grant any other right in, create derivative works from, transmit or in any way exploit all or any part of the Licensed IP except as provided in this Agreement;
- (iii) extract ideas, formulas, procedures, methodologies, or other technology from the Licensed IP (including, without limitation, determining the strains of mycelium used by Ecovative in connection with the Licensed IP);
- (iv) disclose to any third-party any Licensed IP or any other confidential or proprietary information owned by and/or pertaining to Ecovative's operations, including without limitation, business plans, consulting information, technology, products, samples, prototypes, specifications, materials data, production processes, sales data, employees, customer data, finances, methods, plans, procedures, strategies, know-how, and the ideas, methods and techniques incorporated within such information and materials, and any or all expressions and variations of all the foregoing unless permitted in advance in writing by Ecovative;

- (v) practice Licensed IP outside the Territory or outside the permitted Field of Use; or
- (vi) otherwise use the Licensed IP other than as expressly permitted in this Agreement.

8. Warranties and Covenants

You represent, covenant and warrant to Ecovative that:

- (i) You have the full right and authority to enter into this Agreement;
- (ii) entering into and performing under this Agreement will not cause You to breach any contractual right or obligation to any third-party;
- (iii) the Licensed Products will be of good quality in design material and workmanship and will be manufactured, marketed, distributed and sold in accordance with applicable laws and regulations;
- (iv) You will use Your best efforts to sell the Licensed Products;
- (v) You will not use the Licensed IP in any manner which is in violation of any law or governmental regulation; and
- (vi) You will determine Your right and authority to practice the Licensed IP and engage in the development and sale of Licensed Products in the Territory, with no liability or obligation whatsoever on the part of Ecovative to You or third-parties with respect to the use or performance of the Licensed IP or development, sale or performance of Licensed Products.

9. Branding.

You shall not use Ecovative trademarks, tradenames, logos, and/or branding including, without limitation, "Ecovative", "Mushroom® Packaging", "Mushroom Packaging" or similar tradenames; nor may You use any Ecovative certifications (*e.g.*, C2C Gold, etc.), Ecovative specification documents, test results, or Ecovative supplied material properties, to describe your materials. You may, however, refer to Your products as "GIY" products. In addition, on any website You use to market or sell Licensed Products, you must conspicuously refer to the Licensed Products as "Licensed by Ecovative".

10. Indemnity

You shall indemnify and hold Ecovative harmless from any claim, action, proceeding or judgment and all costs associated with same in connection with: (i) the development, manufacture, storage, handling, use, marketing, distribution, and/or sale of the Licensed Products; or (ii) Your failure to comply with Your obligations under this Agreement.

11. Disclaimer

EXCEPT AS PROVIDED OTHERWISE IN THIS AGREEMENT YOU ACKNOWLEDGE AND AGREE THAT THE ECOVATIVE INTELLECTUAL PROPERTY IS PROVIDED "AS IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED BY ECOVATIVE INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ABILITY TO MEET DESIRED PRODUCTION LEVELS OR SPECIFICATIONS.

12. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ECOVATIVE SHALL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LIABILITIES OF ANY KIND ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THE ECOVATIVE INTELLECTUAL PROPERTY, THE LICENSED PRODUCTS, OR THE PROVISION OF OR FAILURE TO PROVIDE TRAINING OR TECHNICAL SUPPORT, EVEN IF ECOVATIVE HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. In no event shall the total maximum liability of Ecovative for all losses, costs, liabilities or damages for any cause whatsoever, and regardless of the form of action, exceed, in the aggregate, five thousand U.S. Dollars (\$1,000).

13. MISCELLANEOUS

- a. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior agreements and understandings between You and Ecovative, whether written or oral, relating to the subject matter of this Agreement. No warranties, covenants or representations other than those contained in this Agreement may be relied upon by either party.
- b. **Notices.** Any notices required under this Agreement shall be addressed as follows:

If to Ecovative:
Ecovative Design, LLC
70 Cohoes Avenue
Green Island, NY 12183
Attn: Eben Bayer

If to You:
[ADDRESS]

Such notice shall be deemed given: (a) if delivered by overnight mail or express courier, upon delivery as evidenced by delivery records; or (b) by e-mail with evidence of successful transmission.

- c. **No Modification; No Waiver.** Except as provided in Section 2 of this Agreement, no change or modification or waiver of the terms of this Agreement shall be binding unless made in writing and signed by both parties. The failure to enforce any right at any time shall not bar enforcement of any right at another time.

- d. **Severability**. If any provision of this Agreement or its application in any circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected, and each remaining term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- e. **No Assignment; No Third-Party Beneficiary**. This Agreement is specific to You and You may not assign Your rights or obligations to anyone, either directly or indirectly through a change in control or otherwise, without Ecovative's prior written consent. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns whether by merger, consolidation or otherwise. No other person or entity shall be deemed a third-party beneficiary under this Agreement.
- f. **Independent Contractor**. Each party is acting as an independent contractor, and nothing in this Agreement shall create or be construed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.
- g. **Survival of Obligations**. The obligations under Sections 4, 5, 6(d), and 7 through 13 of this Agreement shall survive the termination of this Agreement.
- h. **Counterparts**. This Agreement may be signed in any number of counterparts (including by fax or other electronic signature), each of which shall be an original, with the same effect as if the signatures were upon the same instrument.
- i. **Equitable Remedies**. You acknowledge that any breach of this Agreement by You is likely to result in irreparable injury to Ecovative, that money damages would not be a sufficient remedy for such breach, and that Ecovative shall be entitled to seek equitable relief, including injunction and specific performance, as a remedy for any such breach without the necessity of proving actual damages or irreparable injury, or posting bond. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available to Ecovative at law or equity.
- j. **Governing Law and Jurisdiction**. The laws of the State of New York shall govern this Agreement and all proceedings related to this Agreement without reference to conflict of law principles. Any action or proceeding arising out of or relating to this Agreement shall be brought in any New York or Federal court sitting in the County of Albany in the State of New York, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such action or proceeding, and waives any objection it may now or hereafter have to venue or to convenience of forum. **YOU HEREBY WAIVE YOUR RIGHT TO A TRIAL BY JURY.**

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ECOVATIVE DESIGN, LLC

By _____

Name: Eben Bayer

Title: Co-Founder and CEO

[NAME]

By _____

Name:

Title:

SCHEDULE A

Licensed IP

Patents

[insert relevant country patent for “Method for producing grown materials and products made thereby” patent family]

Technical Materials

From time to time, access to technical materials may be made available to you on a subscription basis at such prices as may be established by Ecovative from time to time. Technical materials shall be provided by Ecovative in its sole discretion and subject to the availability of resources to provide such services. TECHNICAL MATERIALS ARE PROVIDED “AS IS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED BY ECOVATIVE INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ABILITY TO MEET DESIRED PRODUCTION LEVELS OR SPECIFICATIONS.

Technical Services

No technical services are provided under this license and no dedicated support resources are available. Basic growing and training materials are available at <https://grow.bio>, which we encourage you to reference. If Ecovative later determines, in its sole discretion, to make technical resources and services available to You, such services will be provided on the terms and conditions of Services and Consulting Agreement that will be provided to You at that time.

SCHEDULE B

Territory and Field of Use

Territory

[Licensee's home country]

Field of Use

Your use of the Licensed IP is limited to the design, production, manufacture and sale of Licensed Products in the Territory in the field of mycelium-based [limit to one application] ("Field of Use").

The Field of Use expressly includes the development, growth or production of raw materials (i.e., creating or enhancing the development of living materials suitable for growth into secondary products or materials) for use in Licensed Products produced directly by You.

Without limiting the foregoing, the Field of Use expressly excludes the following fields ("Excluded Fields"):

- (i) sale of raw materials to third-parties;
- (ii) use of Licensed IP in acoustics applications;
- (iii) use of Licensed IP to create materials consisting of 65% or more of mycelia tissue by mass;
- (iv) use in products where mycelia tissue performs a function usually performed by textiles and/or leather;
- (v) use of Licensed IP in food products for consumption and cell cultures. This exclusion encompasses the sale of by-products from the production of food products;
- (vi) use of Licensed IP in primary (direct contact) food packaging applications; and
- (vii) use of Ecovative intellectual property that was not developed prior to the Effective Date.

SCHEDULE C

Royalty Report Template

Royalty Report for Non-Exclusive License Agreement for Ecovative Intellectual Property dated [date]

Licensee: [name]

Date of Report:

Period covered by this report:

Year:

Quarter:

Country	Customer	Invoice #	Date	Gross Quantity Sold	Total Sales	Product type: % Licensed IP materials in final product (X)		Claims & Allowances*	Freight	Taxes	Net Sales	Royalties Payable
						=>80%	<80%					

* On a separate page, please indicate the reasons for returns or other claims or allowances.

Total Royalty (local currency):

Conversion Rate:

Total Royalty (USD): \$

I hereby certify that the foregoing report is a true and accurate description of all royalties due in accordance with the License Agreement referred to above during the period set forth in this report.

[NAME]

By: _____

Name: _____

Title: _____