

CERTIFICATION MARK LICENSE AGREEMENT (DISTRIBUTOR)

IPC LICENSE NO.

THIS AGREEMENT, made this 1st day of September, 2008 by and between the **IDAHO POTATO COMMISSION**, a statutorily created self-governing state agency of the state of Idaho, Eagle, Idaho, hereinafter called "Licensor," and , hereinafter called "Licensee."

WITNESSETH:

WHEREAS, Licensor has caused to be registered a "GROWN IN IDAHO®" seal and the word "IDAHO®" as certification trademarks (hereinafter referred to as "the marks") with the Commissioner of Patents and Trademarks of the United States of America under registration numbers 2,914,306/631,499; 2,914,307; 2,914,308/802,418; 2,914,309 and 2,934,385/1,735,559; and

WHEREAS, Licensor also acquired certain law certification mark rights in the "GROWN IN IDAHO™" seal and the word "IDAHO™" (also hereinafter referred to as "the marks"); and

WHEREAS, Licensee is a distributor of Idaho® grown potatoes and desires to use the marks in connection with Idaho® grown potatoes distributed by it;

NOW THEREFORE, in consideration of the mutual covenants and agreements to be kept and performed as hereinafter recited, it is agreed:

1. The term of this Agreement shall be from **September 1, 2008 to August 31, 2009**, subject to renewal by mutual agreement, except as the terms of this Agreement provide that certain covenants shall continue to remain in force after August 31, 2009.
2. Licensor hereby grants to Licensee a nonexclusive right to use the marks in connection with the distribution and sale of Idaho® grown potatoes and potato products as herein provided. Licensor grants this license as owner of the marks in its propriety capacity.
3. No container distributed or sold by Licensee may use the word Idaho or a derivation thereof as a brand. No container may depict the state of Idaho in any form unless the product contained therein is 100 percent Idaho® grown potatoes.
4. All of the Rules of Licensor are made a part of this Agreement and incorporated herein by reference. Licensee agrees to familiarize itself with said rules and to comply with all provisions of said rules, and any violation of any provision of said rules will be considered a violation of this Agreement.
5. Licensee agrees that, in shipping Idaho® potatoes, it will not ship any empty containers displaying the marks.
6. A copy of all documents that advertise or promote in any way the Licensee's use of Idaho® grown potatoes or potato products must be forwarded to Licensor prior to use by Licensee, so Licensor can determine whether the marks are being used in a manner that complies with this Agreement and Licensor's rules.
7. A contraction of the words "Idaho® Potatoes" is permissible provided the whole word Idaho® is used, provided the contraction is consistent with accepted principles of English grammar, and provided further that the contraction is used within a context that indicates it is a contraction. The word "IDAHOS" shall not be used on any container of potatoes or potato products, nor in any advertising or other printed material.
8. To ensure compliance with the terms of this Agreement, Licensee agrees to deliver a compliance report as specified by the Licensor, showing the total quantity of potatoes purchased and sold as fresh potatoes in containers or packaging bearing the marks licensed herein. Licensee will also submit an annual report, broken down by month, amount and source, showing the purchase and sale of all Idaho® potatoes and containers bearing Licensor's marks. Failure to submit a complete annual report prior to September 1 of each year for any preceding year shall terminate Licensee's privilege to use Licensor's marks. Licensee agrees that Licensor's authorized representatives may audit and inspect Licensee's records and inspect Licensee's plant(s) and operation(s) at any reasonable time. This audit and inspection authorizes Licensor to verify that no misbranding or mislabeling by Licensee has taken place. Licensee agrees to preserve all records for a minimum period of two years. Licensee represents that the only plant(s) at which it purchases and sells potatoes in containers or packaging with the marks licensed herein are at the addresses indicated at the end of this Agreement.
9. This license 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. No private label containers may be packed for another party unless that party has a valid license to use Licensor's marks.
10. Failure to comply with any of the terms and/or conditions of this Agreement shall constitute a violation of this Agreement and may be considered an infringement of the marks. Licensor may terminate this Agreement upon violation by Licensee of any of the terms hereof. Termination of this Agreement shall be accomplished when Licensor gives Licensee notice by mail of such termination. Termination shall be deemed to have been given when notice in writing has been deposited in the United States mail in a sealed envelope with postage thereon prepaid and certified, addressed to Licensee at the address set forth at the end of this Agreement, or to such other address as Licensee may give Licensor in writing. In addition, Licensor may seek any relief in law or equity for violation of this Agreement or infringement of the marks, as may be appropriate.

11. Upon termination or nonrenewal of this Agreement, all the rights and privileges herein granted to Licensee shall cease and terminate and Licensee shall immediately cease the use of the marks in any manner whatsoever. Any materials or containers bearing or using Licensor's marks shall be immediately destroyed at Licensee's sole expense. It is expressly provided, however, that any obligation of the Licensee set forth in this Agreement, any administrative action, any cause of action for infringement of the marks, or for violation of this Agreement that Licensor may have against Licensee, shall survive the termination or nonrenewal of this Agreement, including the right to reasonable attorney fees and costs.

12. No failure of Licensor to exercise any power given to it hereunder or to insist upon strict compliance by Licensee with any obligation hereunder shall constitute a waiver of Licensor's rights to demand exact compliance with the terms hereof.

13. This Agreement is deemed to have been made in the state of Idaho as part of the transaction of business by Licensee in said state. Licensee agrees to submit to the jurisdiction and venue of the U.S. District Court for the District of Idaho, if Licensor chooses to bring any suit or action in such court against Licensee for infringement of the marks, or enforcement or breach of the terms of this Agreement and that the laws of the state of Idaho shall control the construction, interpretation and legal effect of this Agreement. Should Licensee institute suit against Licensor for any matter related to this Agreement, Licensee agrees that venue for such action shall be in or transferred to the U.S. District Court for the District of Idaho. Licensee agrees to submit to the administrative jurisdiction of the Idaho Potato Commission for any and all purposes permitted by this Agreement or law. Should Licensee institute any suit or action against Licensor for any reason, including but not limited to any matter related to this Agreement, any provision of this Agreement surviving termination hereof, Licensor's rules or Licensor's marks, this provision regarding jurisdiction and venue shall apply.

14. Licensee agrees that in the event that Licensor brings any administrative proceeding, suit, or action to enforce the terms of this Agreement, to prosecute a violation of this Agreement or Licensor's statutes or rules, to enjoin Licensee from an infringement of the marks or to recover damages for breach of such agreement or for such infringement, that Licensor, in addition to any relief awarded administratively or by the court, shall be entitled to its reasonable attorney fees and costs, including attorney fees and costs on appeal.

15. Licensee agrees that the marks shown below are valid registered certification marks owned by Licensor and the Licensor has the sole right therein subject to such licenses as may have been granted to control the use of such marks. Licensee agrees that any use of the marks it has made in the past or will make in the future will not create in Licensee any right, title or interest in or to the marks, but such use will inure to the benefit of Licensor.

16. Licensee recognizes the great value of the goodwill associated with the marks, and acknowledges that the marks and all rights therein and goodwill pertaining thereto belong exclusively to Licensor, and that the marks have a secondary meaning in the mind of the public.

17. Licensee agrees that it will not during the term of this Agreement, or at anytime thereafter, attack the title or any rights of Licensor in and to the marks or attack the validity of this license. Licensee hereby agrees to indemnify and hold Licensor harmless against any losses incurred through claims of third persons against the Licensee involving the packing, repacking, marketing, or sale of the Licensee's goods. Licensee further agrees to indemnify and hold Licensor harmless against any suit, cost or damages that may be imposed on the Licensor as a result of any proceedings instituted by any third party against Licensor arising out of any activities of Licensee pursuant to this Agreement.

18. Upon termination or nonrenewal of this Agreement, Licensee shall completely obliterate or cancel the marks on all containers, packaging or advertising, in Licensee's possession or control at the time of such termination or nonrenewal, at Licensee's sole expense.

19. Licensee may use the marks on its letterheads, business cards, website, and other business printed or non-printed material as well as in advertising, but the marks shall not be used for such purposes in connection with potatoes not grown in Idaho. For the same purposes and subject to the same conditions, Licensee may use the "GROWN IN IDAHO®" mark with the word "licensed" above and the word "dealer" below such mark.

20. Licensee agrees to comply with all the applicable terms and conditions of the rules promulgated by Licensor. Licensee is aware of the fact that Licensor has the power and authority to revise the rules when necessary and Licensee agrees to comply with said revisions. Failure to comply with the provisions of this paragraph will be considered a violation of this Agreement.

21. Licensee will immediately provide to Licensor the name and address of any entity, whether it be a Licensee or non-Licensee, that engages in the mislabeling of Idaho® potatoes, the fraudulent designation of origin of any potatoes as Idaho® potatoes, the misrepresentation of variety of Idaho® potatoes, the use of the "GROWN IN IDAHO®" and "IDAHO®" certification marks by any non-Licensee and/or the use of the certification marks by any entity in any manner not in compliance with the rules whenever and wherever Licensee reasonably believes that such activity is being carried on. This duty is also applicable to Licensee itself.

22. Licensee is required to keep all records required by Licensor's statutes and rules, make in complete detail the reports required by Licensor, comply with audits and inspections requested by Licensor, provide representative samples of containers and potatoes requested by Licensor or its duly authorized agent, and to use to its best efforts at all times to ensure that the marks are correctly used and protected from infringement.

23. Licensee shall provide a list of containers and labels bearing Licensor's marks, with examples thereof with its compliance report, as stated in section 8.

24. Licensor expressly reserves all rights other than those specifically being granted herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 1st day of September, 2008.

THIS AGREEMENT IS NOT FINAL AND LICENSEE SHALL HAVE NO RIGHT AND SHALL NOT USE ANY OF LICENSOR'S MARKS UNLESS AND UNTIL THIS AGREEMENT HAS BEEN ACCEPTED AND APPROVED IN WRITING BY LICENSOR AS EVIDENCED BY LICENSOR'S AUTHORIZED REPRESENTATIVE EXECUTING THIS AGREEMENT.

IDAHO POTATO COMMISSION

By _____ By _____
Authorized Signatory for Licensee Licenser

Print Name and Title of Signatory

Licensee

Address of Licensee

LOCATIONS OF DISTRIBUTION CENTERS OPERATED BY LICENSEE
(If preferred, make attach a list)

THE FOLLOWING ARE DEPICTIONS OF LICENSOR'S CERTIFICATION MARKS:



Idaho® Potatoes

