

**CERTIFICATION MARK LICENSE AGREEMENT
(OUT OF STATE PROCESSOR)**

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 common 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 processor of Idaho® grown potatoes or potato products and desires to use the marks in connection with Idaho® grown potatoes processed by it; and

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 processing, marketing 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. Licensee shall use the marks in connection with the packaging, advertising and sale of processed Idaho® potatoes, only when the product being packaged, advertised or sold contains 100 percent Idaho® grown potatoes, or where the product, ordinarily consisting of the combination of potatoes in one or more component ingredients, does not include potatoes not grown in Idaho in any of the other component ingredients. In the case of products that ordinarily consist of the combination of potatoes in one or more component ingredients, the fact that the product is a combination of Idaho® potatoes and the other component ingredients must be clearly indicated on the label of any packaging or container. Display and use of the marks in connection with processed products shall be subject to the Licensor's rules that are made a part hereof by reference. On all containers or packaging that display the marks, the marks shall be so placed and of such size as to be plainly visible. No containers may use the word "Idaho" or a derivative thereof, or depict the state of Idaho in any form unless the product contained therein is 100 percent Idaho® grown potatoes.

4. Failure to comply with any of the terms and/or conditions of this Agreement shall constitute a violation of the agreement and may be considered as 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, and 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.

5. Before Licensee commences use of the marks with respect to any packaging or containers, it shall send a sample of such to Licensor so Licensor can determine whether the marks are being used in a manner that complies with this Agreement. In addition, 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 with Licensor's rules. No private label containers may be packed for another party unless that party has a valid license to use Licensor's marks or Licensor has authorized such use.

6. 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 clearly indicates it is a contraction. The word "IDAHO'S" shall not be used on any container for potatoes or potato products, nor in any advertising or other printed material.

7. Licensee agrees that Licensor's authorized representatives may audit and inspect the records and inspect the Licensee's plant(s) and operation(s) at any reasonable time to determine compliance with the terms of this Agreement. Licensee agrees to preserve all records for a minimum period of two years. Licensor may take representative samples if necessary. Licensee represents that the only plant(s) at which it will process Idaho® potatoes in containers or packaging with the marks licensed herein are at the locations indicated at the end of this Agreement. Licensee agrees that it has no right to use the marks with respect to potatoes processed by it at any other location(s) unless prior to commencing processing of potatoes at such additional location(s), Licensee notifies Licensor in writing and receives Licensor's approval in writing of such additional location(s).

8. To ensure compliance with the terms of this Agreement, Licensee agrees to deliver a compliance report as specified by Licensor showing the licensed packers and repackers of Idaho® potatoes from whom Idaho® potatoes were purchased during the prior year and showing the inventory and usage of all containers bearing Licensor's marks. Licensee shall also deliver a report showing sales by month and amount of potato sales. If Licensee is using the marks on processed or prepared products, Licensee shall also provide to Licensor an annual report showing the suppliers of the processed or prepared products. Failure to submit a complete compliance 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 the Licensee's records 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 (2) years. Licensee agrees to submit to Licensor with its annual report a listing of the licensed packer(s), repacker(s) or processor(s) Licensee used during the preceding year, and the vendor number or other identification system used by Licensee to identify where the Idaho® potatoes are being packed or repacked. Licensee agrees to direct the packer(s), repacker(s) or processor(s) of Idaho® potatoes used by Licensee to provide the Licensor with the information required to comply with Licensor's audit program. Licensee shall also direct its container manufacturer to provide Licensor with the information required to comply with Licensor's audit program.

9. 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, 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. This license agreement is not assignable and Licensee shall have no rights to grant sublicenses hereunder. Any attempt to assign or grant sublicenses will be a violation of this Agreement.

10. 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.

11. 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 further 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.

12. 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 from other violations of this Agreement or Licensor's statutes or rules, or to recover damages for breach of such Agreement or for such infringement or other violations, or, 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 of the License, Licensor's rules or Licensor's marks, 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, if Licensor prevails. As used in this paragraph, this Agreement includes all terms of this Agreement during the period of the License and all terms that survive the period of the License.

13. Licensee acknowledges that the marks shown below are valid registered certification marks owned by Licensor and the Licensor has the sole rights 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.

14. 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.

15. Licensee agrees that it will not during the term of this Agreement, or at any time thereafter, attack the title or any rights of Licensor in and to the marks or attack the validity of this license and matters incorporated by reference herein. Licensee hereby agrees to indemnify and hold Licensor harmless against any losses incurred through claims of third persons against the Licensee involving the processing 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.

16. 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.

17. 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 or potato products not consisting of 100 percent Idaho® grown potatoes as set forth herein.

18. 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.

19. 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.

20. Licensee is required to keep all records required by Licensor's statute and rules, make in complete detail the reports required by Licensor, comply with audits and inspections requested by Licensor, provide representative samples of product 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.

21. Licensee shall provide a list of containers and labels bearing Licensor's marks, with examples thereof with its compliance report.

22. 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 _____
Authorized Signatory for Licensee

By _____
Licensor

Print Name and Title of Signatory

Licensee

Address of Licensee

LOCATIONS OF PLANTS OPERATED BY LICENSEE

DEPICTIONS OF LICENSOR'S CERTIFICATION MARKS



Idaho® Potatoes

