

## TRADEMARK LICENSE AGREEMENT

### IPC LICENSE NO.

THIS AGREEMENT, made this 1<sup>st</sup> day of September, 2008, by and between the IDAHO POTATO COMMISSION, a statutory Commission of the State of Idaho, Eagle, Idaho, hereinafter called "Licensor" and    , hereinafter called "Licensee".

### WITNESSETH:

**WHEREAS**, Licensor has established as trademarks, and Licensee desires to use under the terms herein referred to as the "marks" the following:

**Alteration and/or reproduction of "Famous - Grown in Idaho - Potatoes" seal, an exact reproduction of which is attached hereto as Exhibit 1; and**

**WHEREAS**, Licensor has trademarked the "Famous - Grown in Idaho - Potatoes" seal, and is willing to allow its specific and limited use, with approval of Licensor; and

**WHEREAS**, Licensor has established its usage of these trademarks and copy-righted materials in classes 8, 9, 16, 21, 25, 28 and 35, which are hereinafter referred to as marks and materials; and

**WHEREAS**, Licensee is an Idaho potato cooperative and desires permission to use the marks and materials in connection with wearables (hats, shirts, jackets, etc.);

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

1. The term of this Agreement shall be from **September 1, 2008 to August 31, 2009**, subject to automatic renewal on an annual basis by mutual agreement.
2. Licensor, subject to the terms and conditions herein stated, hereby grants to Licensee a nonexclusive right to use and reproduce the mark and materials for the following use: to be applied wearables (hats, shirts, jackets, etc).
3. To ensure compliance with the terms of this Agreement, Licensee agrees to deliver an annual compliance report to Licensor on or before September 1st of each year.
4. Licensee agrees that Licensor's authorized representatives may audit and inspect the records of the Licensee's facilities and audit and inspect Licensee's operations at any reasonable time to determine compliance with the terms of this Agreement. Licensor may take representative samples if necessary. Licensee represents that the only uses which it will make of Licensor's marks and materials are set forth in this Agreement.
5. Before Licensee commences any new use of the marks and materials, it shall send a sample of each such use to Licensor so Licensor can determine whether the marks and materials 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 the products must be forwarded to Licensor prior to use by Licensee, so Licensor can determine whether the marks and materials are being used in a manner that complies with this Agreement and with the Licensor's rules and regulations. Failure to comply with the provisions of this paragraph shall constitute a violation of this Agreement and an infringement of the marks.
6. This Agreement may be terminated by the Licensee on thirty (30) days' written notice, provided Licensee is not in default under this Agreement and the supply of product bearing the marks and materials will be exhausted during the next thirty (30) day period of time. This Agreement may be terminated by the Licensor by Licensor giving Licensee written notice of such termination, and shall be considered to have occurred upon mailing of such notice by Licensee. Upon such termination, whether by expiration, mutual consent or otherwise, then all rights and privileges herein granted to Licensee shall cease and terminate, and Licensee shall immediately cease the use of the marks and materials in any manner whatsoever, except as otherwise stated in Paragraph 8, below. It is expressly provided, however, that any cause of action for infringement of the marks and materials, or for violation of this Agreement, that Licensor may have against Licensee shall survive the termination of this Agreement.

7. 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 and materials. At its discretion, and dependant upon the seriousness of the violation of this Agreement, and the willfulness, knowledge and intent of Licensee in violating the agreement, Licenser may:

- A. Notify Licensee of the violation and request the immediate cessation of the same; or
- B. Terminate this Agreement.

Termination of this Agreement shall be accomplished when Licenser gives Licensee notice by mail of such termination, and shall be deemed to have been given in the latter case by notice in writing deposited in the United States mail, in a sealed envelope addressed to Licensee at the address set forth at the end of this Agreement, or to such other address as Licensee may give Licenser in writing. In addition, Licenser may seek any relief in law or equity for violation of this Agreement, or infringement of the marks and materials, as may be appropriate.

8. Upon termination of this Agreement, Licenser may, but is not required to, permit Licensee a reasonable period of time to liquidate any product inventory of Licensee using Licenser's marks and materials. Licensee bears complete responsibility for any unused product remaining following termination of this Agreement.

9. Licenser expressly reserves the sole and exclusive ownership of the marks and materials herein. Licensee agrees not to use such marks and materials, or any combination thereof, with or without any other word or words, as part of its corporate name, or for the purpose of advertising its business, without the prior written consent of Licenser. On the termination of this Agreement, or on the request of Licenser, Licensee shall immediately and completely discontinue all use of such trademarks and trade names.

10. The parties expressly agree that Licensee shall not have any right, title or interest in the marks and materials described herein, except only the right to use such marks in connection with the activities of Licensee described herein. Nothing contained in this Agreement shall be construed to grant or assign to Licensee any additional right, title or interest in such marks and materials, except such limited right to use such marks.

11. No failure of Licenser 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 Licenser's rights to demand exact compliance with the terms herein.

12. Licensee agrees that the marks and materials are valid, registerable marks, owned by Licenser, and that Licenser has the sole right, subject to such licenses as may have been granted, to control the use of such marks and materials. Licensee agrees that any use of the marks and materials 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 uses shall inure to the benefit of Licenser.

13. Licensee agrees that it will not, during the term of this Agreement, or at any time thereafter, attack the title or any rights of Licenser in and to the marks and materials, or attack the validity of this license. Licensee hereby agrees to indemnify and hold Licenser harmless against any losses incurred through claims of third persons against the Licensee involving the manufacturing, processing or sale of the Licensee's goods. Licensee further agrees to indemnify and hold Licenser harmless against any cost, including attorney fees or damages that may be imposed on the Licenser as a result of any proceedings instituted by any third party against Licenser arising out of any activities of Licensee pursuant to this Agreement.

14. Licensee may use the marks and materials on its letterheads, business cards and other business printed material, as well as in advertising, but the marks and materials shall not be used for such purposes in violation of this Agreement or Licenser's rules, and shall not occur until such use has been approved by Licenser in writing.

15. Licensee agrees to comply with all the applicable terms and conditions of the rules promulgated by Licenser. The terms and conditions of the rules are incorporated herein by reference. Licensee is aware of the fact that Licenser 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.

16. Licensee will provide the name and address of any entity, whether it be a licensee or non-licensee, that engages in the misuses or infringement of Licenser's marks and materials and/or the use of the marks and materials 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.

17. This 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.

18. This Agreement is deemed to have been made in the state of Idaho, United States of America, as a part of the transaction of business by Licensee in such state. Licensee agrees to submit to the jurisdiction of the Fourth Judicial District, Ada County or U.S. District Court for the District of Idaho, as the case may be, if Licensor chooses to bring any suit or action in such Court against such Licensee for infringements of the marks and materials, or enforcement or breach of the terms of this Agreement, and Licensee further agrees that the laws of the state of Idaho shall control the construction, interpretation and legal effect of this Agreement. Licensee further agrees that any action it brings against Licensor shall be brought in the Fourth Judicial District, Ada County, or the U.S. District Court for the District of Idaho, as the case may be.

19. Licensee agrees to indemnify and hold Licensor harmless against any cost or damages that may be imposed on 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.

20. Licensee is required to keep all records required by Licensor's rules, make incomplete detail the reports required by Licensor's rules, comply with audits and inspections requested by Licensor, provide representative samples of each of uses of the marks and materials requested by Licensor or its duly authorized agent, and to use, to its best efforts and, at all times, to ensure that the marks and materials are correctly used and protected from infringement. Licensee agrees to preserve all records for a minimum period of two (2) years.

21. Licensee shall not pay Licensor a royalty for each product item.

**THIS AGREEMENT IS NOT FINAL AND LICENSEE SHALL HAVE NO RIGHT AND SHALL NOT USE ANY OF THE 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.**

IN WITNESS WHEREOF, the parties hereto have executed the foregoing document this 1<sup>st</sup> day of September, 2008.

COMPANY

IDAHO POTATO COMMISSION

By: \_\_\_\_\_

Company Signatory  
Company Name  
Company Address  
Company Phone  
Company email

By: \_\_\_\_\_

Patrick J. Kole, Vice President  
Legal and Governmental Affairs  
661 S. Riverside Lane, Suite 230  
Eagle, Idaho 83616  
Telephone: (208) 334-2350

### EXHIBIT 1

Sample of Trademark specific to this license:

