

**CERTIFICATION MARK LICENSE AGREEMENT
(RETAILER)**

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 trade marks (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 retailer of Idaho® grown potatoes and desires to use the marks in connection with Idaho® grown potatoes sold 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 packing, marketing and sale of Idaho® grown potatoes and potato products as herein provided.

3. If Licensee uses the marks in connection with retailing of Idaho® potatoes, Licensee agrees to use only licensed packers and repackers of Idaho® grown potatoes who have agreed to pack in containers bearing the "GROWN IN IDAHO®" and "IDAHO®" marks only Idaho® grown potatoes that meet U.S.D.A. Fresh Potato Grades set forth in the Federal Marketing Order Regulation No. 945.341, including the following minimum quality requirements:

- (1) Grade. All varieties — U.S. No. 2 or better grade.
- (2) Size.
 - (i) All Russet varieties — 2-inch minimum diameter or 4 ounce minimum weight: Provided, that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier.
 - (ii) All other varieties — 1½ inches minimum diameter unless otherwise specified on container in conjunction with the grade.
 - (iii) All varieties — Size B, U.S. No. 1 Grade, 1½ inches minimum diameter and 2½ inches maximum diameter.
 - (iv) Creamers — U.S. No. 1 Grade, ¾ inch minimum diameter and 1½ inch maximum diameter.
 - (v) Size shall be conspicuously marked on all cartons. (Except when used as master containers)
- (3) Cleanliness. All varieties — "fairly clean."

or such other grades or quality requirements as shall be provided by the Idaho Potato Commission. Licensee shall use the marks whenever retailing Idaho® grown potatoes. In no event shall Licensee use the marks on or in connection with containers containing any products other than Idaho® grown fresh potatoes meeting the grade and size standards set forth herein. Licensor also grants Licensee the right to use the marks on processed or prepared products if indicated on the back of this Agreement. In the event that Licensee uses the marks on processed or prepared products, Licensee shall use only licensed entities to obtain product that has been grown in Idaho. No container 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 revisions thereto and any violation of any provision of said Rules will be considered a violation of this Agreement.

5. Licensee agrees that, in shipping containers for packing or repacking Idaho® potatoes, it will not ship any empty containers displaying the marks in excess of the minimum number of such empty containers reasonably anticipated as necessary to pack or repack Idaho® potatoes for use by Licensee.

6. 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. Upon request, Licensee shall provide Licensor with copies of representative advertising, and promotional materials displaying the marks. Any future advertisement with the same content shall thereafter be deemed approved.

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 for 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 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

reports 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. If any potatoes shipped in bulk or in containers do not meet the minimum quality requirements as set forth herein when inspected, such potatoes shall not be marketed or sold in connection with the marks until the potatoes are first reworked and reinspected in accordance with paragraph 3 and found to meet the minimum quality requirements. All Idaho® potatoes sold shall comply with Licensor's rules regarding variety labeling.

10. 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.

11. 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 an infringement of the marks. Termination of this agreement shall be effective sixty (60) days after Licensor gives Licensee notice by mail of such termination if Licensee fails to rectify breach within said sixty-day period.

12. 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.

13. 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.

14. 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. Should Licensee institute suit 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.

15. 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.

16. 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 only 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.

17. 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.

18. 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. Licensee hereby agrees to indemnify and hold Licensor harmless against any losses incurred through claims of third persons against the Licensee involving the packing, 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.

19. 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.

20. 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 purposes in connection with potatoes not grown in Idaho or, when retailing potatoes, potatoes that do not meet the minimum quality requirements as set forth herein. 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 "retailer" below such mark.

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 statute 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.

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 _____
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

