

**CERTIFICATION MARK LICENSE AGREEMENT
(IN STATE PACKER/SHIPPER)**

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 has 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 packer of Idaho® grown potatoes and desires to use the marks in connection with Idaho® grown potatoes packed 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. Licensor grants this license as owner of the marks in its proprietary capacity.

3. If Licensee uses the marks in connection with the packaging of Idaho® potatoes, Licensee agrees 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) Cleaness. All varieties — "fairly clean."

or such other grades or quality requirements as shall be provided by the Idaho Potato Commission. Licensee shall always use the marks whenever packing or repacking 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. 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. All containers packed in Idaho, must state: "Packed in Idaho."

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 shall 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 in excess of the minimum number of such empty containers reasonably anticipated by Licensor to be necessary to replace containers damaged in such shipment.

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. 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 Licensor showing the total quantity of potatoes packed as fresh potatoes in containers or packaging bearing the marks licensed herein. Licensee shall also provide Licensor with an annual report, broken down by month, amount and source, showing the inventory and usage of all 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 packs or processes 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 packed by it at any other location(s) unless prior to commencing packing of potatoes at such additional location(s), Licensee notifies Licensor and receives Licensor's approval in writing of such additional location(s). This license is valid only for facilities located within the state of Idaho.

9. If any potatoes shipped in bulk or in containers do not meet the minimum quality requirements as set forth herein owing to permanent grade defects, such potatoes shall not be marketed or sold in connection with the marks until the potatoes are first reworked and re-inspected by federal-state inspectors and found to meet the minimum quality requirements. Licensee must also identify the variety of such potatoes, and affirmatively determine that any recipient intending to or repacking Idaho® grown potatoes hold a valid license to use Licensee's marks. All packed Idaho® potatoes shall comply with Licensee'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. No private label containers may be packed for another party unless that party has a valid license to use Licensee's marks or Licensee has authorized such use.

11. 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. Licensee may terminate this Agreement upon violation by Licensee of any of the terms hereof. Termination of this Agreement shall be accomplished when Licensee gives Licensee notice by mail of such termination. Terminations 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 pre-paid 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 Licensee in writing. In addition, Licensee may seek any relief in law or equity for violation of this Agreement or infringement of the marks, as may be appropriate.

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 Licensee'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 Licensee 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 Licensee 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 Licensee's rights to demand exact compliance with the terms hereof.

14. Licensee consents to jurisdiction in the District Court of the Fourth Judicial District of Ada County of the state of Idaho for any and all proceedings brought by Licensee relative to the enforcement or revocation of this license or Licensee's rules. Should Licensee institute suit against Licensee or for any matter related to this Agreement, Licensee agrees that venue for such action shall be in or transferred to the District Court of the Fourth Judicial District of Ada County of the state 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 Licensee for any reason, including but not limited to any matter related to this Agreement, any provision of this Agreement surviving termination hereof, Licensee's rules or Licensee's marks, this provision regarding jurisdiction and venue shall apply.

15. Licensee agrees that in the event that Licensee brings any administrative proceeding, suit, or action to enforce the terms of this Agreement, to prosecute a violation of this Agreement or Licensee's statutes or rules, to enjoin Licensee from an infringement of the marks, or from other violations of this Agreement or Licensee'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 Licensee for any reason, including but not limited to any matter related to this Agreement, any provision of this Agreement surviving termination of the License, Licensee's rules or Licensee's marks, that Licensee, 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 Licensee 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 Licensee and the Licensee has the sole right therein subject to such licenses as may have been granted to control the use of such marks. Licensee agrees that 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 Licensee.

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 Licensee, 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 Licensee in and to the marks or attack the validity of this license. Licensee hereby agrees to indemnify and hold Licensee 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 Licensee harmless against any suit, cost or damages that may be imposed on the Licensee as a result of any proceedings instituted by any third party against Licensee 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 such purposes in connection with potatoes not grown in Idaho or, when packing 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 "dealer" below such mark.

21. Licensee agrees to comply with all the applicable terms and conditions of the rules promulgated by Licensee. Licensee is aware of the fact that Licensee 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.

22. Licensee will immediately provide to Licensee 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.

23. 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.

24. Licensee shall provide a list of containers and labels bearing Licensor's marks, with annual renewal of license agreement.

25. Prior to the sale or transfer of any business or substantially all of the assets of a business licensed hereunder, Licensees shall notify Licensor of the proposed transfer and pay all advertising taxes then due. Provisions shall also be made for payment of anticipated taxes through closing of the proposed transfer. No License will be issued by Licensor to another person or entity using the name, location or assets of a business licensed by Licensor until all taxes, penalties, interest and costs of Licensor, including attorney fees, are paid in full.

26. 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

P.A.C.A. License Number

LOCATIONS OF PLANTS OPERATED BY LICENSEE

DEPICTIONS OF LICENSOR'S CERTIFICATION MARKS



Idaho® Potatoes

