

## LICENSE AGREEMENT--GROWER/PACKER/SHIPPER

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the National Potato Promotion Board DBA United States Potato Board, a statutorily created instrumentality of the United States Department of Agriculture, hereinafter called "Licensor," and \_\_\_\_\_, hereinafter called "Licensee;"

**WHEREAS**, Licensor has caused to be registered POTATOES GOODNESS UNEARTHED® Nutritional Signature as association service marks (hereinafter referred to as "PGUNS") with the Commissioner of Patents and Trademarks of the United States of America under registration numbers 3,604,229 and 3,737,512; PGUNS are attached as Exhibit A and incorporated by reference herein; and

**WHEREAS**, Licensee is a grower/packer/shipper of potatoes and desires to use PGUNS in connection with potatoes grown, packed or shipped by it.

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

1. The term of this Agreement shall be from the initial date of execution of this Agreement as set forth above to July 1 of each year, subject to renewal by mutual agreement, except as the terms of this Agreement provide that certain covenants shall continue to remain in force after July 1 of each year.
2. Licensor hereby grants to Licensee a nonexclusive, royalty- free right to use PGUNS in connection with the packing, marketing and sale of potatoes and potato products as herein provided. Licensor grants this license as owner of PGUNS in its propriety capacity.
3. All uses of PGUNS must be submitted in advance to Licensor for approval. Once approval is obtained for a specific design, the design approval certificate must be kept on file by both the grower/packer/shipper and the manufacturer of the packaging and no further approval is necessary. All previously accepted uses of PGUNS under the prior Guidelines may be submitted for grandfathered approval and design certification if submitted by June 1, 2012. All new designs must be approved in advance by Licensor. Licensee agrees that any violation of the terms of this Agreement shall be grounds for immediate termination of this license and that in such event it will be subject to the sanctions for infringement of PGUNS hereinafter stated. Licensee agrees to display the symbol ® with every use of PGUNS and Licensee agrees to comply with the Revised Regulations of Licensor. Licensee acknowledges receipt of a copy of the Revised Regulations attached as Exhibit B and incorporated by reference herein.
4. Before Licensee commences use of PGUNS with respect to any packaging or containers, it shall send a sample of such to Licensor so Licensor can determine whether PGUNS is 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 PGUNS must be forwarded to Licensor prior to use by Licensee, so Licensor can determine whether PGUNS is being used in a manner that complies with this Agreement and Licensor's Revised Regulations.
5. 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 PGUNS licensed herein are at the locations indicated at the end of this Agreement.
6. This License Agreement is not assignable and Licensee shall have no right to grant sublicenses hereunder. Any attempt to assignor 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 PGUNS or Licensor has authorized such use.
7. Failure to comply with any of the terms and/or conditions of this Agreement shall constitute a violation of this Agreement and maybe considered an infringement of PGUNS. 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.

8. 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 PGUNS in any manner whatsoever. Any materials or containers bearing or using PGUNS 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.

9. 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.

10. Licensee consents to jurisdiction in the District Court of the Tenth Judicial District of Denver County of the state of Colorado for any and all proceedings brought by Licensor relative to the enforcement or revocation of this license or Licensor's Revised Regulations. 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 District Court of the Tenth Judicial District of Denver County of the state of Colorado. Licensee agrees to submit to the administrative jurisdiction of the United States Potato Board 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 Revised Regulations or PGUNS, this provision regarding jurisdiction and venue shall apply.

11. 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 PGUNS, 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 Revised Regulations or PGUNS, 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.

12. Licensee agrees that PGUNS shown below are valid registered association 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 PGUNS. Licensee agrees that use of PGUNS 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 PGUNS, but such use will inure to the benefit of Licensor.

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

14. 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 PGUNS 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.

15. Upon termination or nonrenewal of this Agreement, Licensee shall completely obliterate or cancel PGUNS 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.

16. Licensee may use PGUNS on its letterheads, business cards, website, and other business printed or non printed material as well as in advertising . 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.

17. 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 or the use of PGUNS association marks by any non-Licensee and/or the use of PGUNS 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.

18. 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 PGUNS is correctly used and protected from infringement.

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

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

By \_\_\_\_\_  
Authorized Signatory for Licensee

By \_\_\_\_\_  
Authorized Signatory for Licensor

\_\_\_\_\_  
Print Name and Title of Signatory

\_\_\_\_\_  
Print Name and Title of Signatory

\_\_\_\_\_  
Address of Licensee

Exhibit A

DEPICTIONS OF LICENSOR'S ASSOCIATION MARKS

POTATOES GOODNESS UNEARTHED® Nutritional Signature



POTATOES GOODNESS UNEARTHED SYMBOL



**Exhibit B**  
**REVISED REGULATIONS**