

LICENSE AGREEMENT--MANUFACTURER (Packaging and/or Containers)

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 manufacturer of packaging and/or containers used by potato packers and growers and desires permission to use PGUNS on such packaging and/or containers.

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, subject to the terms and conditions herein stated, hereby grants to Licensee a nonexclusive, royalty-free right to reproduce PGUNS on packaging and/or containers manufactured by it for use by packers and repackers of potatoes, processors of potatoes, and for no other uses.
3. Licensee agrees to distribute packaging and/or containers manufactured by it and containing PGUNS only to packers, repackers and processors who have current, valid association mark license agreements with Licensor. Licensee shall obtain the names of packers, repackers and processors who have current valid agreements by requesting the same from Licensor. All uses of PGUNS must be submitted in advance to Licensor for approval. Once approval is obtained for a specific design on packaging and/or containers, the design approval certificate must be kept on file and no further approval is necessary other than the report as required under Paragraph 4. All previously accepted uses under the prior Guidelines may be submitted for grandfathered approval and design certification if submitted by December 31, 2011. 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.
4. To ensure compliance with the terms of this Agreement, Licensee agrees to deliver a compliance report as specified by the Licensor on or before May 1 of each year, showing the names of each packer, repacker and/or processor that were furnished packaging and/or containers bearing the aforementioned marks together with the quantity furnished, identified by type of packaging and/or containers provided to each packer, repacker and/or processor. Licensee agrees to preserve all records for a minimum period of three (3) years. Licensee agrees that Licensor's authorized representative may inspect and audit its records pertaining to the manufacture and distribution of the packaging and/or containers using said marks and that it may inspect that portion of Licensee's plant and operation used in the manufacture of such packaging and/or containers at any reasonable time.
5. Licensee agrees to display the symbol ® with every use of PGUNS. Licensee agrees in the manufacture of all packaging and/or containers 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.
6. This Agreement may be terminated by the Licensee on thirty (30) days written notice, provided Licensee is not in default under this Agreement. This Agreement may be terminated by the Licensor giving Licensee written notice of such termination and shall be considered to have occurred 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. 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 PGUNS in any manner whatsoever except as otherwise stated in paragraph 7. It is expressly provided, however, that any administrative action, any cause of action for infringement of PGUNS or for violation of this Agreement that Licensor may have against Licensee shall survive the termination of this Agreement, including the right to reasonable attorney fees and costs.

7. Nothing in this Agreement shall prohibit the sale of packaging and/or containers on which PGUNS have been completely obliterated by Licensee.

8. In the event of termination or expiration as specified in Section 6, subject to the provisions of Section 3, Licensee may sell to packers, repackers and/or processors on the list of Licensees, provided by Licensor in accordance with the provisions of Section 3, so much of its inventory of packaging and/or containers bearing either or both marks that is on hand at the time of such termination or expiration that is not in excess of the average amount of such inventory during the six (6) months immediately preceding the date of termination. Provided, however, that Licensee must: (a) notify Licensor in writing that it intends to dispose of such inventory ten (10) days prior to such intended action; (b) dispose of such packaging and/or containers only to persons legally entitled to use such packaging and/or containers; (c) agrees in writing to continuation of such provisions within this Agreement as are necessary to insure compliance with this Agreement; and (d) may only dispose of inventory that is not in violation of the Revised Regulations. Inventory in excess of such amount may only be disposed of after obliteration of PGUNS.

9. Licensor expressly reserves the sole and exclusive ownership of PGUNS herein. Licensee agrees not to use PGUNS 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. On the termination or expiration of this Agreement, or on the request of Licensor, Licensee shall immediately and completely discontinue all use of PGUNS.

10. The parties expressly agree that Licensee shall not have any right, title or interest in PGUNS described herein except only the right to use PGUNS 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 PGUNS except such limited right to use PGUNS.

11. 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.

12. Licensee agrees that PGUNS are valid, registered association marks, owned by Licensor and that Licensor has the sole right, subject to such licenses as may have been granted, to control the use of PGUNS. Licensee agrees that any 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 uses shall insure to the benefit of Licensor.

13. This Agreement is not assignable, and Licensee shall have no right to grant sub-licenses hereunder. Any attempt to assign or grant sub-licenses will be a violation of this Agreement.

14. This Agreement is deemed to have been made in the state of -Colorado 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 Colorado if Licensor chooses to bring any suit or action in such Court against Licensee for infringement of PGUNS, or enforcement or breach of the terms of this Agreement, and Licensee further agrees that the laws of the state of Colorado 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 Colorado. Licensee agrees to submit to the administrative jurisdiction of the U.S. Potato Board. 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.

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 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 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 to indemnify and hold Licensor harmless against any suit, 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.

17. 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 packaging and/or containers requested by Licensor or its duly authorized agent, and to use to its best efforts at all times to ensure that PGUNS are correctly used and protected from infringement.

18. 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 misuse of Licensor's marks.

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

20. Licensee may not use PGUNS on its letterheads, business cards, website, and other business printed or non-printed material..

21. Licensee agrees that it will not during the term of this Agreement, or 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.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of _____, 20__.

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.

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

LOCATIONS OF PLANTS OPERATED BY LICENSEE

Exhibit A

DEPICTIONS OF LICENSOR'S ASSOCIATION MARKS

POTATOES GOODNESS UNEARTHED® Nutritional Signature



POTATOES GOODNESS UNEARTHED SYMBOL



Exhibit B

Revised Regulations