

2007 SEASON

VIDALIA® ONION GROWER/PACKER CERTIFICATION MARK LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20 **07**, by and between the GEORGIA DEPARTMENT OF AGRICULTURE, State of Georgia government entity, Agriculture Building, Capitol Square, Atlanta, Georgia 30334, (hereinafter referred to as "LICENSOR") and

_____ (hereinafter referred to as "LICENSEE");

WITNESSETH:

WHEREAS, LICENSOR has caused to be registered the word "VIDALIA®" as a U.S. Certification Mark (sometimes hereinafter referred to as "Mark") with the Commissioner of Patents and Trademarks of the United States of America and owns all right, title and interest to the use thereof on or in connection with fresh onions, the same being Registration Number 1,709,019; and

WHEREAS, LICENSEE grows, packs, processes, markets and/or sells VIDALIA® onions, such onions having been grown in accordance with the Georgia Vidalia Onion Act of 1986, *Official Code of Georgia Annotated (O.C.G.A.) 2-14-130 et. seq.* and the Rules of the Georgia Department of Agriculture, Chapter 40-7-16 (Rules); and

WHEREAS, LICENSEE desires to obtain a license to be authorized to use the Mark in connection with VIDALIA® onions grown, packed, processed, marketed or sold by it, and LICENSOR is willing to grant such a license to licensee in accordance with the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants and agreements to be kept and performed as hereinafter recited, the parties agree as follows:

1. **GRANT.** Licensor hereby grants to Licensee non-exclusive, non-transferable and royalty-free license to use the Mark only in connection with the growing, harvesting, packaging, processing, marketing and sale of Vidalia® onions, said Vidalia® onions being only the Granex-varieties of onions, which are grown, packed and processed within the Vidalia® onion production area in Georgia, in accordance with the Georgia Vidalia Onion Act of 1986, *O.C.G.A. 2-14-130 et. seq.*, as amended, and the Rules of Licensor in Chapter 40-7-16 related thereto. This license and the right to use hereunder are effective only as long as such onions meet the quality and quantity standards of this Agreement, or until sooner terminated hereunder.

2. **TERM.** The term of this Agreement shall be from the date of execution of this Agreement through the last day of February of the next succeeding year.

3. **APPROVALS.** (a) From time to time during the term of this Agreement, Licensor may request Licensee to provide to licensor a sample of such products, packaging, containers, labels, advertising or promotional materials so that Licensor can determine whether the Mark is being used in the manner which complies with this Agreement.

(b) Licensee agrees that each use of the Mark on any products, packaging, containers, labels, advertising and promotional materials shall be followed by an encircled "R" ("®"), the registered notice symbol, as directed by Licensor. Furthermore, Licensee shall place the wording "**VIDALIA® is a registered Certification Mark of the Georgia Department of Agriculture**" on all packaging of any and all products and in promotional and other material as may be required by Licensor, whenever the Mark appears.

(c) Licensee represents, covenants and agrees that it will use the Mark only in the form and manner approved by the Licensor and will not use the Mark in combination with or close proximity to any other trademarks, service marks or certification marks, without the prior written approval of Licensor. All packaging and processing shall take place in and no bulk shipments of onions may be made out of the Vidalia® onion production area in Georgia.

4. **QUALITY.** Licensor shall have right to control the nature and quality of all Vidalia® onions. Licensee agrees to maintain a quality standard for its Vidalia® onions not less than (for dry onions) the minimum Standards for Grades of Bermuda-Granex-Grano Type onions, as established by Rules of the Georgia Department of Agriculture for Vidalia® onions, or (for green onions) the minimum U.S.D.A. Standards for Grades of Common Green Onions. Onions shall only be ones that are grown in accordance with the Georgia Vidalia Onion Act of 1986, as amended. Licensee agrees to

allow Licensor access to Licensee's harvesting, packing, storage, manufacturing, production and/or marketing facilities during normal hours and with reasonable notice to inspect the Vidalia® onions to enable Licensor to determine if appropriate quality standards are being maintained. The representations contained in Licensee's 2007 Application for Registration were relied upon for the granting of this Agreement, and such representations and said Application are incorporated into this Agreement and made a part hereof by reference thereto. Licensee agrees to abide strictly with the said representations.

5. OWNERSHIP OF RIGHTS AND GOODWILL. (a) Licensee acknowledges that the Mark is owned by Licensor and that the Licensor has the sole right to control the use of such Mark, both now and hereafter, on Vidalia® onions and also on products containing Vidalia® onions. 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 the Mark, as registered or otherwise used or claimed by Licensor, or attack the validity of this license or any part hereof. Licensee agrees that any use of the Mark it has made in the past, is now making or will make in the future has and will not create in Licensee any right, title or interest in or to the Mark. Further, Licensee will not do anything inconsistent with such ownership and that all use of the Mark has, does and shall inure to the benefit of and be on behalf of the Licensor.

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

6. ASSIGNABILITY. This Agreement is not assignable and Licensee shall have no right to grant sublicenses hereunder. Any attempts by Licensee to assign or grant sublicenses or otherwise transfer Licensee's right under this Agreement will be in violation of this Agreement. More than ten percent (10%) change in the ownership of any Licensee (including 10% change in stock ownership) shall constitute a transfer.

7. TERMINATION. (a) Licensor may terminate this Agreement by giving written notice to Licensee if Licensee breaches any provision of this Agreement and Licensee fails to correct such breach within thirty (30) days of being notified by Licensor.

(b) Upon termination of this Agreement, all the rights and privileges herein granted to Licensee shall cease and terminate and Licensee shall immediately cease to use the Mark in any manner whatsoever and no products, containers, packaging, labels advertising or publicity material bearing the Mark shall be sold or otherwise publicly distributed. It is expressly provided, however, that any cause of action for infringement of the Mark, or for violation of this Agreement which Licensor may have against Licensee, shall survive the termination of this Agreement, including the right to reasonable attorney's fees and costs.

8. FORM AND COLOR. The Mark may be featured in any typestyle or color approved in advance by the Licensor; otherwise, it shall be in all capital block letters in black on a light background.

9. ADVERSE DISPLAYS. The Mark may not be used in any manner that adversely affects the Licensor's ownership rights in and to the Mark, or in any derogatory, scornful, derisive or disparaging manner, in parody, or in other disparaging displays that, in the sole opinion of Licensor, does not portray an image or connotation consistent with that desired by the Licensor.

10. NO AGENCY RELATIONSHIP; CONTROL; INDEMNIFICATION. This license does not create any agency, partnership, joint venture, fiduciary or other relationship between the Licensor and Licensee other than that of "Certification Mark Owner" and "User", and neither party has a right, power or authority to represent or bind the other in any manner. In granting this license, Licensor assumes no liability for any claims, injuries or legal cost connected therewith, relating to the manufacture, sales or merchandising by Licensee of products bearing such Mark. Accordingly, Licensee hereby indemnifies and holds harmless Licensor, its officers, agents, employees and assigns, and the Commissioner of Agriculture, his officers, agents and employees from any such claims, action, injuries and legal cost accruing or resulting from customer or other usage of the products for any reason, including but not limited to defective or tampered with merchandise that either is or is not marked with or bearing the Mark.

11. INFRINGEMENTS. Licensee agrees to notify Licensor in writing of any infringements or limitations by third parties of the Mark, which may come to Licensee's attention. Licensee agrees to assist Licensor in enforcement of any rights of Licensor related to any infringement or imitation of the Mark. Licensor shall have the sole right to determine whether or not any action shall be taken on account of any such infringement or imitation and Licensor shall have the sole right to employ counsel of its choosing and to direct the handling of the litigation and any settlement thereof. Licensor shall be entitled to receive and retain all settlement amounts and all amounts awarded as damages, profits or otherwise in connection with such suits.

12. **SEVERABILITY.** In the event that any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

13. **HEADINGS.** The headings of articles and paragraphs herein are for convenience of reference only and are without substantive significance.

14. **APPLICABLE LAW.** This Agreement shall be governed by the laws, rules and regulations of the State of Georgia.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date above written.

GEORGIA DEPARTMENT OF AGRICULTURE (Licensor)

BY: _____

PRINT NAME: **Robert Meyer, Jr.**

TITLE: **Director of Markets**

(Licensee)

BY: _____

PRINT NAME: _____

TITLE: _____