

**AGREEMENT**  
**BETWEEN**  
**THE NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND**  
**COMPANY NAME**

The Nebraska Department of Agriculture, hereinafter referred to as the “Department,” and the recipient, hereinafter called the “Licensee” has the nonexclusive right to use the Nebraska Our Best to You logo, which is the exclusive property of NDA, subject to the terms of this Agreement.

Article I – History

The Nebraska Department of Agriculture conducted a study in 2004 to determine the level of interest and current purchasing behavior patterns of Nebraskans relative to locally grown food products. According to this study, Nebraskans were interested in purchasing locally grown foods, and 75 percent of all respondents indicated they supported the development and implementation of an official Nebraska logo program. Consequently, an official logo was developed, which is entitled, “*Nebraska Our Best to You*.” The intent of the logo is to further advance the availability and benefits of Nebraska’s agricultural food products.

While there continues to be an increased demand for locally grown produce, many consumers find it difficult to identify Nebraska products. Efforts focused on promoting the *Nebraska Our Best to You* logo in retail outlets will help alleviate this problem. The logo will be used as a certification mark on article labels and in advertisements to identify and increase the marketability of Nebraska food product articles. Entities wishing to use this logo may do so by becoming an Associate Member of this program and by entering into this license agreement with the Department. Listed below are the requirements and benefits of Associate Membership.

Article II – Associate Membership

1. Eligibility. The *Nebraska Our Best to You* logo can be used by commodity groups, government agencies, educational institutions, retailers, and wholesalers by entering into this license agreement with the Department.
2. Fees. Membership is free to Associate Members. They can use this logo at their own discretion, so long as they comply with the rules outlined in this license agreement. Promotional paraphernalia can consist of stickers, table tents, shelf-talkers, banners, price cards, and T-shirt bags, all of which must promote the *Nebraska Our Best to You* logo.

3. Benefits. Benefits of membership can include, but may not be limited to:
- Assisting consumers in identifying Nebraska products;
  - Educational and marketing opportunities;
  - Free use of logo; and
  - Advertisement on radio, printed media, and promotional materials (e.g., point of sale signage materials, available at cost).

#### Article III – Licensee

Licensee shall not acquire and shall not claim any right, title, or interest in the logo, except the right to use the logo in accordance with the terms of this Agreement. Licensee acknowledges and agrees that the limitations set forth herein concerning use of the logo are the essence of this Agreement.

#### Article IV – Duration of Agreement

This Agreement shall be in force and effective from January 1, 2009, to December 31, 2009. This contract becomes valid upon the date of the final signature.

#### Article V – Use of Logo, Department Approval

The definition of the *Nebraska Our Best to You* logo is to increase the marketability of Nebraska's agricultural products. The logo shall only be used as a certification mark on article labels and in advertisements to identify and increase the marketability of Nebraska food product articles. All use shall be in accordance with the terms of this Agreement.

Licensee acknowledges that the license provided hereunder was granted based on approval from the Department. Licensee may use the logo, at no cost, so long as approval has been granted to the Licensee from the Department. In the event the Licensee's products cease to comply with the rules set forth in Article III, Paragraph 1 above, Licensee will immediately advise the Department of said noncompliance and will immediately cease any and all use of the logo. Licensee acknowledges that any misrepresentations set forth in the application and/or subsequent renewal applications constitute a material breach of this Agreement.

The logo shall, whenever possible, be reproduced in four colors. The word "NEBRASKA" is white, the color identifying the shape of Nebraska and the words "OUR" are green (PMS 364), the word "BEST" in yellow (PMS 142), and the words "TO YOU" green (50 percent PMS 364). If the Licensee wishes to use this logo with different or similar colors, including a black and white version, the Licensee must first make a written request to the Department. The Department will decide and inform the Licensee whether those may be used.

Prior to using the logo, the Licensee shall submit a sample of each proposed label to the Department for its approval. No label, employing the logo, shall be used without prior approval by the Department. Upon approval by the Department, the Licensee agrees to employ the logo in a manner such that all labels and advertising used thereafter shall be of a standard equal to the sample initially approved by the Department.

#### Article VI – Protection of Logo

The Licensee shall use no other name, mark, designation, or logo type which, in the sole opinion of the Department, is confusingly similar to the NEBRASKA OUR BEST TO YOU Program Marks.

The Licensee shall not use the logo in any manner which, in the sole opinion of the Department, expresses or implies that products identified by the logo are fit for a particular purpose, or have received any type of approval as to quality or standards.

The Licensee shall not use the marks in a manner which, in the sole opinion of the Department, is deceptive, misleading, inaccurate, likely to cause consumer confusion, constitutes unfair competition, or is otherwise adverse or inconsistent with the laws of the State of Nebraska.

The Licensee acknowledges the validity and commercial value of the logo and the Department's exclusive ownership, right, and interest in and to the logo. The Department reserves the sole right and discretion to bring an action for infringement or dilution of its logo, unfair competition or like actions.

#### Article VII – Warranties

The Licensee warrants that it has no outstanding final judgments against it by the State, including tax liabilities, and agrees that any payments incurred by the State in this Agreement may be applied against such liabilities currently owing or incurred in the future.

The Licensee agrees that if this representation and warranty is deemed to be false, the Agreement shall be void between the parties to this Agreement, and any funds paid by State hereunder shall be immediately repaid to State, or an action for recovery may be immediately commenced by State for recovery of said funds.

#### Article VIII – Compliance with Law

The Licensee agrees to have in force, during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:

- (1) A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in the Licensee's workplace;
- (2) The specific actions that will be taken against employees for violating the policy; and
- (3) A requirement that each employee shall receive a copy of the policy.

The Licensee warrants it is not listed with the Secretary of State for unfair labor practices. The Licensee guarantees payment of compensation to injured workers according to the Nebraska Workers Compensation Act. Therefore, the Licensee accepts full responsibility for payments of all unemployment compensation, insurance premiums, workers compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the Licensee in the performance of the work authorized by this Agreement.

All provisions of this Agreement are subject to the Americans with Disabilities Act.

#### Article IX – Indemnity

The Licensee shall indemnify, defend, and hold harmless the Department from any and all liabilities, claims, causes of action, suits, proceedings, and all damages and expenses, including costs and legal fees, that may arise out of or on account of any failure on the part of the Licensee as herein specified. The Licensee may be liable or may incur or be compelled to pay these fees arising out of any actions, whether by omission or commission, of its servants, agents, or employees, in connection with or arising out of its use of the Department's logo.

#### Article X – Amendments

No change to any provision of this Agreement shall be effective unless stated, in writing, and signed by both parties to this Agreement.

Notwithstanding paragraph 1 of this Article, the Department may, as it deems either necessary or desirable, and without incurring any obligation or liability to the Licensee, amend, rescind, or adopt new administrative rules for this logo. Any amendments, rescissions, or additions shall, upon adoption of the Department, become amendments to this Agreement binding upon both the Department and the Licensee.

#### Article XI – Conflict and Severability

In the event of conflict between the Agreement and applicable laws, regulations, or orders of any competent authority having jurisdiction or in the event of any conflict between such applicable laws or regulations or orders, the most stringent or legally binding requirement shall govern and be considered as a part of this Agreement in order to afford the Department the maximum benefits thereof.

Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

#### Article XII – Termination

Except in the case of a breach resulting from circumstances beyond the control and without the fault or negligence of the Licensee, the Department shall be entitled, by written or oral notice, to cancel this Agreement in its entirety or in part, for breach of any terms of this Agreement.

No term or provision of this Agreement shall be deemed waived and no breach excused unless the waiver or consent is in writing and signed by both parties to this Agreement. The Department may, at its discretion, in event of a breach, notify the Licensee of the breach and allow it a time specified by the Department to correct the breach.

Either the Department or the Licensee may, in good faith, unilaterally terminate this Agreement in whole or in part, at any time and for any good reason, by giving thirty (30) calendar days advance written notice to the other party.

#### Article XIII – Assignment

Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or sublicensed by either party hereto.

Article XIV – Relationship between Department and Licensee

The Licensee shall not represent itself as the Department's agent or legal representative for any purpose whatsoever, and shall have no right to create or assume any obligation of any kind, express or implied, for or on the Department's behalf in any manner whatsoever. Furthermore, it is the express intention of the parties that the Licensee, under this Agreement, shall be that of principal and independent contractor. It is understood by both the Department and the Licensee that the Licensee is not an employee of the Department. It is understood that the Department assumes no responsibility beyond those specifically stated in this Agreement.

Article XV – Applicable Law, Headings

This Agreement and any claims arising in any way out of this Agreement shall be governed by the laws of the State of Nebraska. Any provision of this Agreement prohibited by the laws of Nebraska shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Nebraska and the Licensee hereby irrevocably consents to such jurisdiction.

The headings used in this Agreement are for convenience only and shall not be used in interpreting this Agreement.

IN WITNESS WHEREOF, the Department, through its legally appointed Director and the Licensee through its duly authorized representative, have caused this Agreement to be executed on the dates set forth below. This Agreement is not assignable without the express written approval of the Department and becomes valid upon the date of the final signature.

Approved:

NEBRASKA DEPARTMENT OF  
AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

COMPANY NAME

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contact Name, Title