

**BUY CALIFORNIA MARKETING AGREEMENT ADVERTISING AND  
PROMOTIONAL CAMPAIGN**

**LICENSING AGREEMENT**

The Buy California Marketing Agreement (“BCMA”), and

\_\_\_\_\_ (“Participant”) hereby agree as follows:

Upon full execution of this Licensing Agreement, BCMA grants Participant nonexclusive, royalty-free permission to use the CA GROWN Certification Mark (United States Patent & Trademark Office Registration Number 2,792,670), and the phrase “CA GROWN” on Participant’s labels and packages in accordance with, and subject to, the provisions of this Licensing Agreement.

**I. RECITALS**

A. The California Department of Food and Agriculture and the Buy California Marketing Agreement developed the “California Grown” Advertising and Promotional Campaign (“Campaign”) to increase awareness and consumption of California agricultural products (generic and branded) among California consumers.

B. BCMA involves multiple California agricultural products, is generic in nature, and revolves around the development of a California identity message, and may include, but is not limited to, advertising, merchandising, sales and consumer promotion, consumer education, media outreach, marketing and scientific research, health promotion, and public relations.

C. The intent is to use the Certification Mark to differentiate for retailers and consumers product meeting the standard of identity from product that does not.

D. The mark and phrase “CA GROWN” (Exhibit A) is owned by BCMA and is referred to as in this agreement as the “Certification Mark”.

E. Participant has applied to BCMA for permission to use the Certification Mark in connection with the purposes expressed in A., B., and C., above.

**II. PAYMENT**

Participant shall pay \$ \_\_\_\_\_ per year to use the Certification Mark in accordance with calculation, attached as Exhibit C and incorporated by reference. The calculation upon which this fee is based may also be viewed at the headquarters of BCMA.

### **III. PROVISIONS RELATING TO THE CERTIFICATION MARK**

#### **A. Use**

1. The Certification Mark shall only be applied to product that meets the standard contained in Food and Agricultural Code section 43100 (produced in California or harvested in its surface or coastal waters), except as specified in 2. below. For this purpose, product whose components are 85% grown or harvested in California or its surface or coastal waters will be presumed to meet the statutory standard.

2. The Certification Mark may be used in advertisement in conjunction with the phrase "look for this mark."

3. Participant shall provide reasonable assurances it has a system in place to meet the above requirements. Participant shall maintain records sufficient to audit this system for the life of the licensing agreement and shall make those records available upon request to BCMA.

#### **B. Image Requirements**

1. The Certification Mark shall be reproduced only in authorized colors as displayed in the original diskette version provided upon execution of this agreement.

2. The Certification Mark may be adjusted in size provided the proportions are not changed; however, the Certification Mark may not be reduced smaller than 7/8" wide by 1/2" high.

3. The Certification Mark shall not be altered in any way other than specified in B.2. above.

4. Participant's name and/or trademark may not be inserted within or overlap the boundaries of the Certification Mark.

5. Participant shall not use the Certification Mark as its own mark, or as the exclusive representation of Participant's business entity.

#### **C. Message Created by the Certification Mark**

1. If BCMA, in its discretion, finds that a particular use of the Certification Mark is inconsistent with the Campaign, it may require the Participant to discontinue that particular use of the Certification Mark.

2. Participant's advertising, promotional or merchandising materials which use the Certification Mark shall not be, or make any claims which are, false, misleading, or deceptive, including, but not limited to, claims which discredit, disparage, or otherwise unfairly attack the quality, value, sale, or use of any competing product. Participant shall at all times comply with advertising standards of all applicable local, state, and federal laws.

3. Upon BCMA's written notice, Participant shall, from the time of the notice on, obtain BCMA's pre-approval for Participant's use of the Certification Mark. Pre-approval by BCMA pursuant to this paragraph shall in no way affect Participant's obligations to use the Certification Mark consistent with the other provisions of this agreement.

#### **D. Ownership and Protection of the Certification Mark**

1. Participant recognizes the great value of the goodwill associated with the Certification Mark and acknowledges that the Certification Mark and goodwill are the property of BCMA. Participant agrees to do nothing to diminish the value of the Certification Mark and to reasonably assist BCMA in its efforts to protect the Certification Mark.

2. While BCMA intends to promote the Certification Mark and the consumer recognition thereof, nothing in this Licensing Agreement shall be construed to impose on BCMA any particular obligation or requirement to promote the Certification Mark.

#### **E. Records**

1. Participant shall at all times during the term of this agreement create and maintain records evidencing Participant's compliance with the terms and conditions of this agreement, including, but not limited to:

- a. Documents identifying that the product labeled with the Certification Mark was a California agricultural product as defined in section III.A.1. above;
- b. A description of how the Certification Mark was used on packaging or labels, including types and quantities; and
- c. Examples of Participant's actual usages of the Certification Mark in the stream of commerce.

2. Six months following execution of this agreement, Participant shall submit a certification attesting to its compliance with this agreement. Unless BCMA specifies otherwise, the certification shall contain the information specified in paragraph b. and c. above. BCMA may require additional status certifications upon written notice to Participant.

### **V. CONDITIONS OF THIS AGREEMENT**

#### **A. Indemnification**

Participant shall indemnify and hold harmless BCMA, the State of California, and each of their respective employees, officers, directors, and agents from any claims, actions, suits, injuries, damages, costs, expenses (including, but not limited to, attorneys' fees), and/or other liabilities arising out of or connected with: (i) Participant's use of the Certification Mark (ii) Participant's breach of this agreement; and/or (iii) the promotion, sale, use, or consumption of Participant's product.

**B. Termination**

1. This agreement shall commence as of the date signed by BCMA and shall continue in effect until suspended or terminated by BCMA. BCMA may terminate this agreement effective ninety (90) days from the date written notice is served on Participant or as otherwise specifically provided in this agreement.

2. Should BCMA determine that Participant has failed to comply with any of the obligations or conditions set forth in this agreement, the agreement and all rights to use the Certification Mark may be terminated by BCMA effective immediately upon service of notice by regular and certified mail. Participant acknowledges that improper use of the Certification Mark would result in irreparable harm, and BCMA may seek and obtain a court order restraining Participant’s further use of the Certification Mark. The remedies provided herein are cumulative and in addition to any other rights or remedies BCMA may have at law or equity.

**C. Attorney’s Fees**

In any litigation between the Parties related to this agreement, the prevailing party shall be entitled to reasonable attorney’s fees and expenses and actual costs of suit.

**D. Communication and Notices**

Any notices, reports, or communications sent pursuant to this agreement shall be in writing and served personally or by certified mail, postage and charges prepaid, addressed as follows:

BUY CALIFORNIA MARKETING  
AGREEMENT  
1521 I Street  
Sacramento, CA 95814  
(916) 441-5302  
FAX: (916) 446-1063

PARTICIPANT:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. Assignment Prohibited**

The permission to use the Certification Mark herein granted is personal to Participant and may not be assigned or transferred in any way without prior written consent of BCMA.

**F. Entire Agreement**

This agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or agreements between the Parties relating to this subject matter.

**G. Waiver of Provisions**

None of the provisions of this agreement may be waived or modified except expressly in writing and signed by both Parties.

**H. Applicable Law**

This agreement shall be interpreted and construed in accordance with the laws of the State of California.

**I. Jurisdiction**

Participant agrees to submit to the jurisdiction of the courts of the State of California and/or the United States of America for purposes of any dispute arising out of this agreement.

**IV. SIGNATURES**

**Having read and understood the preceding pages, Participant hereby agrees to abide by the terms and conditions of this agreement.**

Date: \_\_\_\_\_

Participant: \_\_\_\_\_  
Please print or type company name

By: \_\_\_\_\_  
Signature and printed name

Title: \_\_\_\_\_  
Please print or type

**Accepted:**

Date: \_\_\_\_\_

**Buy California Marketing Agreement**

By: \_\_\_\_\_  
Signature and printed name

Title: \_\_\_\_\_  
Please print or type

**EXHIBIT A  
CERTIFICATION MARK**



**COLORS**

Primary Blue: Pantone 301C

Lighter Blue: Pantone 3005C

Yellow: Pantone 136C

**FONT**

License plate: Futura Condensed

## EXHIBIT C CALCULATION OF LICENSING FEES

CA GROWN Licensing Agreement Cost Structure  
4-Nov-02

Sample Product	5-yr. Avg.	Assessment	Handler/Shipper/Producer Share of Industry											
			1%			4%			10%			40%		
			Co. Value	Share	Actual	Co. Value	Share	Actual	Co. Value	Share	Actual	Co. Value	Share	
Small Industry	\$ 59,000,000	\$ 7,500	\$ 590,000	\$ 75	\$ 1,000	\$ 2,360,000	\$ 300	\$ 1,000	\$ 5,900,000	\$ 750	\$ 1,000	\$ 23,600,000	\$ 3,000	
Mid-Sized Indust	\$ 286,000,000	\$ 25,000	\$ 2,860,000	\$ 250	\$ 1,000	\$ 11,440,000	\$ 1,000	\$ 1,000	\$ 28,600,000	\$ 2,500	\$ 2,500	\$ 114,400,000	\$ 10,000	
Large Industry	\$ 5,049,000,000	\$ 50,000	\$ 50,490,000	\$ 500	\$ 1,000	\$ 201,960,000	\$ 2,000	\$ 2,000	\$ 504,900,000	\$ 5,000	\$ 5,000	\$ 2,019,600,000	\$ 20,000	

### How to read this chart:

- 1) Three industries are included on the chart as examples, one small, one mid-sized and one very large
- 2) Assuming the industry is not a signatory, the size of the entity seeking to license the logo would determine the licensing fee
- 3) The formula is based on multiplying a grower or handlers' share of his particular industry by the assessment rate the industry would fall into as a signatory
- 4) A grower or handler representing 1% of the industry would pay the minimum of \$1,000 in all three examples
- 5) A company representing 4% of the market for a large industry would pay \$2,000
- 6) Large companies (representing 40% of an industry in the examples above) would pay higher licensing fees as shown in the table