

# LICENSE AGREEMENT FOR WORD MARK AND/OR LOGOS

This License Agreement for usage of a Word Mark (the “**Agreement**”) is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2011 (the “**Effective Date**”), by and between Columbia Plateau Producers, LLC, d/b/a The Shepherd’s Grain., a Washington company (“**SG**”) with offices at 103 W Main Street, Ritzville, WA 99169 and \_\_\_\_\_ (“**Licensee**”) with address at \_\_\_\_\_ SG and Licensee (each a “**Party**”, and collectively the “**Parties**”) agree as follows.

## 1. Scope

A. Scope. SG is willing to disclose to LICENSEE and allow LICENSEE to use their Registered Word Mark and/or Logos identified in **Exhibit A** (Word Mark and/or Logos), subject to and in accordance with the terms of this Agreement. The Parties acknowledge and agree that the Logos and Word Mark constitute some of SG’s valuable intellectual property including its registered Trade Mark.

## 2. License

A. License Grant. Subject to the terms of this Agreement, including but not limited to the restrictions set forth in **Section 2(B)** below, SG grants to LICENSEE a nonexclusive, nontransferable, nonsublicensable, personal license (“**License**”) during the Term to use the Word Mark and/or Logos solely for its internal purposes (i.e., without the right to redistribute any or all of the Word Mark or Logos) for the following purpose:

1. To add SG’s Word Mark and/or Logos to the art work of individual product packaging, materials, containers, advertisements, promotional materials, for use on or in connection with Licensee’s approved products, identified as: \_\_\_\_\_

SG reserves the right to review all design work and allow use of the Word Mark and/or Logos only after written approval by SG.

B. Restrictions of LICENSEE. LICENSEE will:

1. Use the Word Mark and/or Logos only in accordance with the License and not for any other purpose without the prior written consent of SG;
2. Not permit any other entity (including any parent, subsidiaries, affiliated entities, or third parties) to access, review, or use the Word Mark and/or Logos;
3. Not remove, modify, or tamper with any of the confidential and proprietary markings that SG places on the Word Mark and/or Logos or any of the security features that

accompany the Word Mark and/or Logos , and the Word Mark must contain the ® mark designating registration with the United States Patent and Trade Mark Office;

4. Not include, incorporate, or distribute all or any portion of the Word Mark and/or Logos to any third party, including but not limited to, redistribution as part of a product or service developed by LICENSEE in accordance with the License; and

5. Should LICENSEE be merged, acquired, or purchased by any other entity, this License expires immediately and all data received from SG must be appropriately destroyed and confirmed and certified in writing as to its destruction so as to ensure no transfer or disclosure of any of the Word Mark and/or Logos, unless SG expressly agrees to the transfer of the Word Mark and/or Logos in writing.

C. Proprietary Rights. The License is a limited license, and SG retains all rights, title, and interest in and to the Word Mark and/or Logos, including but not limited to, the underlying Trade Secret(s), including any modifications or enhancements thereto or derivatives thereof, and the exclusive right to file for patents, copyrights, and trademarks thereon.

### **3. Commercial Terms**

A. Fees. No license fees or royalties are due to be paid to SG from Licensee. The Party's agree that increased exposure of SG branding in association with Licensees products is of valuable and sufficient consideration.

B. Delivery. SG will deliver the Word Mark and/or Logos in the form and format determined by SG at a time mutually agreeable by the Parties.

C. Audit.

During the Term and for six (6) months after LICENSEE's last access to the Word Mark and/or Logos, LICENSEE will maintain accurate records regarding its use of the Word Mark and/or Logos. Upon ten (10) days prior written notice, SG will have the right to audit these records during normal business hours. The purpose of this audit will be to ensure LICENSEE is utilizing the Word Mark and/or Logos and SG flour in accordance with the terms of this Agreement. In accordance with this section SG will also have the authority to conduct quality assurance sampling to ensure compliance with this Agreement.

### **4. Warranty; Warranty Disclaimer**

A. Warranties. Each Party warrants that (1) it is a legal entity duly organized, validly existing, and in good standing under the laws of the state in which it is organized; (2) it has the full right and authority to enter into this Agreement and to perform the acts required of it hereunder; and (3) the performance of its obligations under this Agreement will not violate applicable law or any agreement to which it is a party or by which it is bound.

B. WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS **SECTION 4**, EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 5. Indemnification

A. Mutual Indemnity. Each Party (the “**Indemnifying Party**”) will defend and indemnify the other Party (the “**Indemnified Party**”) against any claim or action brought by a third party, to the extent such claim or action is based on any allegation which, if proven, would constitute a breach of the warranties contained in **Section 4(A)**.

## 6. Limitation of Liability

To the extent permitted by law, and except for (A) breach of LICENSEE’s obligations under **Section Section 2** (License), or **Section 3** (Commercial Terms), or (B) either Party’s indemnification obligation owed under **Section 5** (Indemnification), neither Party will have any liability under this Agreement for: (1) consequential, incidental, exemplary, special, or punitive damages even if advised of the possibility of such (including, but not limited to, loss of business, profits, business information, or business interruption or any other pecuniary loss); or (2) for direct damages, actually proven, exceeding the amounts paid by LICENSEE for the Word Mark that is the subject of the claim. This limitation will be enforced even if it causes a remedy to fail of its essential purpose.

## 7. Term and Termination

A. Term. This Agreement will commence on the Effective Date and will continue for a period of twelve (12) months, renewable in twelve (12) month increments upon written agreement of the Parties.

### B. Termination.

1. LICENSEE may terminate this Agreement upon 30 days written notice to SG and returning to SG or destroying (and certifying such destruction of) all copies of the Word Mark and/or Logos in its possession or subject to its control.
2. Either Party may terminate this Agreement upon 30 days’ prior written notice if: (a) the other Party materially breaches the Agreement and fails to cure the breach within such 30-day period; or (b) the other Party files a petition seeking bankruptcy protection, has an involuntary bankruptcy petition filed against it, has a receiver appointed or otherwise declares its inability to maintain its business or pay its debts as they become due.

C. Rights Upon Termination. Upon termination of this Agreement, each Party will cease the use of and return or destroy all property of the other Party in its possession or subject to

its control, within thirty (30) days of termination of Agreement. LICENSEE shall certify in writing compliance with this section, 7 C, at the end of the thirty (30) day period.

## **8. Assignment**

LICENSEE may not assign this Agreement or License to anyone, including any parent, subsidiary, or affiliate or as part of the sale of any portion of its business, or pursuant to any merger, consolidation, reorganization, or operation of law, without SG's prior written consent.

## **9. Governing Law**

This Agreement and performance hereunder will be governed by the laws of the State of Washington. Sole venue and jurisdiction for any proceedings under this Agreement will be in the state and federal courts located in Spokane County, Washington.

## **10. Force Majeure**

Except for an obligation to pay fees, neither Party will be liable for failure to perform any of its obligations under this Agreement during any period in which such Party cannot perform due to matters beyond its control, including, but not limited to, strike, fire, flood, or other natural disaster, war embargo, or riot, provided that the party so delayed immediately notifies the other party of such delay.

## **11. Notices**

All notices and other communications given or made pursuant to this Agreement will be in writing and will be deemed effectively given: (i) upon personal delivery to the Party to be notified, (ii) when sent by confirmed email or fax if sent during normal business hours of the recipient, but if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.

SG :

Columbia Plateau Producers, LLC  
12996 Kupers Road North  
Harrington, WA 99134

*With a copy to:*

Lee & Hayes, PLLC  
ATTN: Jeffrey Smith  
601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201

Fax: 509-323-8979

Email: [jeffreys@leehayes.com](mailto:jeffreys@leehayes.com)

LICENSEE:

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**12. Waiver**

The waiver or failure of either Party to exercise in any respect any right provided for herein will not be deemed a waiver of any further right hereunder.

**13. Severability**

If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, to that extent it is to be deemed modified in order to comply with applicable law, and the remaining provisions will not be affected in any way.

**14. Relationship of Parties**

The relationship between the Parties is that of two independent contractors and not of partners, and no partnership law, concepts, or duties will apply to the relationship between the Parties. Accordingly, the Parties will perform all of their duties under this Agreement as independent contractors. Nothing in this Agreement will be construed to give either Party the power to direct or control the daily activities of the other Party, or to constitute the Parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. The Parties understand and agree that, except as specifically provided in this Agreement, neither Party grants the other Party the power or authority to make or give any agreement, statement, representation, warranty, or other commitment on behalf of the other Party, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of the other Party, or to transfer, release, or waive any right, title, or interest of such other Party.

**15. Entire Agreement and Amendment**

This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any prior agreement or understanding whether oral or written relating to the subject matter hereof. This Agreement may be modified only by a written agreement signed by both Parties, and no deletion, additions, or revisions to this Agreement will be valid unless signed by both Parties. The headings used herein are for convenience only and will not control or affect the meaning or construction of any provisions of this Agreement.

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WHEREFORE, the Parties have caused their authorized representatives to signify their agreement to these terms by signing below.

\_\_\_\_\_

SG SIGNATURE

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

\_\_\_\_\_

LICENSEE SIGNATURE

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

## Exhibit A

“**Word Mark**” and “**Logos**“ mean the registered Trade Mark of Shepherd’s Grain as noted and to be used as demonstrated below:

(1) SHEPHERD’S GRAIN ®