

2016 NON-EXCLUSIVE SUBLICENSE AGREEMENT (Canadian Independent Seed Grower)

BETWEEN: Potato Variety Management Institute, Inc., an Idaho nonprofit corporation (“PVMI”)
661 South Rivershore Lane, Suite 230, PO Box 1670, Eagle, ID 83616
Phone: (541)318-1485; Email: jeannedebons@msn.com

And _____ (“GROWER”)

Phone: _____; Fax: _____
Email: _____

PVMI and GROWER agree as follows:

1. Non-Exclusive Sublicense. Subject to the terms and conditions of this Agreement, PVMI grants GROWER a non-exclusive sublicense to use the Licensed Products identified below in the Territory identified below for the sole purpose of propagating the Licensed Product in the identified Territory for sale and/or internal transfer as seed (i.e., replanting for commercial production by GROWER), for the 2016 crop year through and until December 31, 2016, unless sooner terminated by PVMI in accordance with this Agreement. GROWER may not assign or sublicense any of its rights under this Agreement. A new agreement with PVMI is required for any other contracted or affiliated grower. Further, PVMI retains all of its rights, including but not limited to domestic and international Intellectual Property Rights.

1.1 Licensed Product and Territory. “Licensed Product” means any type of tissue culture plantlets or mini-tubers, pre-nuclear, nuclear, first field generations, and later generations of seed potatoes of the following variety(ies) selected from among those listed in Exhibits A and B (attached hereto) (“PVMI Varieties”), to be grown solely in the territory(ies) indicated below (the “Territory”):

Variety	Designation	Territory (identify specific province(s), as applicable)
		Outside U.S. [US\$250 Annual License Fee]
		[US\$1.00/cwt royalty rate - US\$2.00/cwt royalty rate for specialty varieties]

1.2. Annual License Fee. Upon the mutual execution of this Agreement, GROWER shall pay PVMI a single Annual License Fee as above.

1.3 Annual Royalty. GROWER also shall pay an Annual Royalty for each variety of Licensed Product at the applicable per cwt rates stated above with respect to each category of the Territory in which the seed was grown. Specialty varieties (see attached Exhibit A & B) are subject to a higher rate. The Annual Royalty must be paid on all sales of Licensed Product seed from the crop year of this Agreement, whether sold within the term of this Agreement or thereafter, and are due within thirty (30) days of each respective sale or transfer date. All Licensed Products sold or otherwise transferred by GROWER shall be presumed to have been sold as seed. If GROWER demonstrates to PVMI's satisfaction that Licensed Product seed is not being sold by GROWER as seed but instead to non-seed/commercial markets, GROWER shall also pay PVMI an Annual Royalty on 10% of the total cwt sold to non-seed/commercial markets at the applicable per cwt rates stated above with respect to each category of the Territory in which the seed was grown.

This Agreement is subject to all of the terms and conditions stated herein, including the Additional Terms and Conditions on the following pages, to which GROWER and PVMI expressly agree. GROWER acknowledges and agrees that any additional or modified terms inserted by GROWER are not part of the contract between PVMI and GROWER unless expressly agreed to by PVMI in writing.

POTATO VARIETY MANAGEMENT INSTITUTE, INC. **GROWER:** _____
Signature: _____ Signature: _____
Name: _____ Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

**PVMI NON-EXCLUSIVE SUBLICENSE AGREEMENT (Canadian Seed Grower)
Additional Terms and Conditions**

2. Intellectual Property Rights.

2.1 Definition. For the purpose of this Agreement, “Intellectual Property Rights” means: (a) all certificates, registrations, and other rights under applicable legal protection for plant varieties including without limitation the U.S. Plant Variety Protection Act (“PVP”); (b) certificates, registrations, and other rights for international plant variety protection pursuant to the International Union for the Protection of New Varieties of Plants (e.g., plant breeder rights), and any other rights for the protection of plant varieties in all countries where such rights are available; (c) all patent rights (including all applications, registrations and rights of registration, reissues, divisions, continuations, continuations-in-part, substitutes, renewals and extensions); and (d) all trademarks (including all applications, registrations, reissues, divisions, renewals, and extensions, and all common law trademark rights).

2.2 Reservations. Notwithstanding the foregoing, PVMI and GROWER acknowledge and agree that this Agreement is subject to: (a) certain obligations to the United States Government as set forth in 35 U.S.C. §§ 202(c)(4) and 209(d)(1), pursuant to which the United States Government has an irrevocable, non-exclusive, nontransferable, royalty-free license to practice (or have practiced) certain of the Intellectual Property Rights in research for or on behalf of the United States Government; and (b) the terms of certain exclusive license agreements between PVMI and the Tri-State Partner Institutions. For the purposes of this Agreement, “Tri-State Partner Institutions” means Oregon State University, the University of Idaho, Washington State University, and the United States Department of Agriculture’s Agricultural Research Service.

2.3. No Assignment/Sublicensing/Sub-contracting; Unauthorized Propagation. GROWER shall not assign, sublicense, or sub-contract any of its rights under this Agreement. By executing this Agreement and/or using Licensed Products subject to this Agreement, GROWER acknowledges and agrees that each variety subject to this Agreement is a protected variety. Specifically, GROWER acknowledges notice of and knowledge that unauthorized propagation is prohibited and that unauthorized propagation could subject the GROWER to liability for damages, including those under applicable law. GROWER shall be jointly liable with any assignee, sublicensee, or contract or affiliate grower for all royalty and license fees or any other amounts owing to PVMI by any such assignee, sublicensee, or contract or affiliate grower that directly or indirectly asserts rights by or through GROWER.

2.4 Plant Variety Protection. The parties agree that the Plant Variety Protection Act of 1970, 7 U.S.C. section 2321 *et seq.*, applies to this Agreement irrespective of whether a PVP certificate is still pending and has not yet issued. The parties agree that this Agreement will be interpreted and enforced under the laws of the State of Idaho (see Section 10 below) and pursuant to the Plant Variety Protection Act, and additionally, where applicable, pursuant to any pending or issued plant breeder rights. The parties agree that this Agreement has been specifically bargained for equally between the parties and the doctrine of *contra proferentem* shall therefore not apply. ***GROWER acknowledges and agrees that there is no assurance that any PVP certificate, plant breeder rights, or other Intellectual Property Rights will issue for a particular variety of License Product(s).***

3. Payments. Payments to PVMI shall be payable, in U.S. dollars, to Potato Variety Management Institute, Inc. at PO BOX 1670, 661 Rivershore Lane, Suite 230, Eagle, ID 83616 U.S.A, or such other address as PVMI may instruct by notice to GROWER. In the event any amounts due hereunder are not paid within thirty (30) days from the date due, GROWER shall pay interest accruing at the rate of twelve percent (12%) per annum from the date originally due until paid in full.

4. Reporting and Records of Licensed Product Sales.

4.1 Reporting. GROWER shall, on or before the date payment of the Annual Royalty is due pursuant to Section 1.3 above, provide PVMI with an accurate written report (in a form designated by or acceptable to PVMI) of the generation, location, acreage and number of units (e.g., cwt) of all Licensed Product produced, sold and/or otherwise transferred in each applicable country, and in each applicable U.S. state, as seed by GROWER (“Seed Information”). GROWER also shall publish such Seed Information in GROWER’s local seed or certification directory. All Licensed Product sold or otherwise transferred by GROWER shall be presumed to have been sold as seed, and GROWER shall have the burden to document and to establish (to PVMI’s satisfaction) that any Licensed Product transferred was not used as seed. Where GROWER transfers or uses Licensed Product (e.g., Licensed Product seed) for internal purposes of GROWER or its affiliated entities, Annual Royalties shall nonetheless be paid to PVMI as indicated above and reported as if such transfers or uses were Licensed Product seed sales under an arm’s-length transaction. Upon request by PVMI, GROWER shall additionally provide PVMI with the name and address of each buyer or transferee of Licensed Product seed potatoes from GROWER, and PVMI agrees to hold such information in confidence, except to the extent required to establish the amounts due and owing under this Agreement or unless disclosure is otherwise required by applicable law. GROWER is required to list all Licensed Product produced in state or provincial seed directory. GROWER is required to provide any information requested by the Canadian Food Inspection Agency concerning Licensed Product produced.

4.2 Records. GROWER shall keep accurate and correct records of Licensed Product made, used, sold, or otherwise commercialized by GROWER under this Agreement appropriate to determine the amount of royalties due and

compliance with the terms and conditions hereunder. Such records shall be retained for at least three (3) years following a given reporting period. Such records shall be made available during normal business hours for inspection, upon at least five (5) days prior notice, by PVMI or a Tri-State Partner Institution, or by a Certified Public Accountant ("CPA") selected by PVMI or a Tri-State Partner Institution and approved by GROWER, for the sole purpose of verifying reports and payments hereunder. Such CPA shall not disclose any information other than information relating to accuracy of reports and payments made under this Agreement. In the event that any such inspection shows an underreporting and underpayment, then GROWER shall pay any additional sum that would have been payable to PVMI had GROWER reported correctly, with interest at the rate provided in Section 3, plus any out-of-pocket costs associated with the audit.

5. Performance and Diligence. GROWER shall take all reasonable steps, and shall incorporate all reasonable practices, necessary to ensure the quality and reputation of the Licensed Product, which steps and practices will include, as applicable: (a) the Licensed Products may be sold only as foundation, registered, or certified seed (or equivalent); (b) GROWER must mark all packages and/or invoices for Licensed Products with applicable indicators of identity (i.e., variety name, certificate numbers); (c) GROWER's applicable catalogs, advertising and/or other commercial documents must include a notice that the Licensed Products are protected under applicable certificate number(s) (or equivalent); (d) GROWER will implement and monitor quality assurance standards for all contract growers authorized for commercial use of Licensed Product; and (e) GROWER will ensure that any Licensed Products it uses, sells, transfers or otherwise disposes of are not defective and will satisfy all applicable federal, state, provincial, and local statutes, rules, and regulations. PVMI, or its authorized representatives, have reasonable rights of inspection over GROWER's operations for the purpose of verifying GROWER's compliance with the terms of this Agreement.

6. Enforcement.

6.1. Notice of Infringement. GROWER shall notify PVMI of any apparent or likely unauthorized propagation of PVMI Varieties that comes to the attention of GROWER.

6.2 Failure to Meet Obligations. If (i) GROWER fails to meet the obligations set forth in Section 5 above; (ii) GROWER is in default on payment of Annual Royalties (iii) GROWER has willfully made a false statement or willfully omitted a material fact in any report required by this Agreement; (iv) GROWER commits a substantial breach of any other covenant or agreement contained in this Agreement; or (v) GROWER is adjudged bankrupt or has its assets placed in the hands of receiver or makes any assignment or other accommodation for the benefit of creditors, PVMI may, at its sole option and discretion, modify or terminate this Agreement and/or may refuse to license future PVMI Varieties to GROWER ("Blacklisting"). Prior to any modification or termination of this Agreement or Blacklisting under this Section 6.2, PVMI shall furnish GROWER a written notice of intention to modify, terminate and/or subject GROWER to Blacklisting, and GROWER shall be allowed thirty (30) days after the date of such notice to remedy any breach or default of any provision of this Agreement to PVMI's satisfaction.

7. Term and Termination.

7.1 Term. This Agreement shall commence on the Effective Date, and unless sooner terminated under this Section 6, shall terminate on December 31, 2016.

7.2 Events following Termination. Upon termination of this Agreement, all sums due to PVMI hereunder shall become immediately payable. GROWER shall, however, pay any subsequent royalties accruing in accordance with the provisions of Section 1.3.

8. Limitations; Indemnification by GROWER.

8.1 Disclaimer of Warranties. PVMI MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH REGARD TO ANY INTELLECTUAL PROPERTY RIGHTS OR CULTIVARS OR LICENSED PRODUCTS HEREUNDER. PVMI EXPLICITLY AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF THE CULTIVARS OR LICENSED PRODUCTS.

8.2 Limits on Damages. IN NO EVENT SHALL PVMI OR ITS OFFICERS, MEMBERS, AGENTS OR EMPLOYEES BE LIABLE TO GROWER OR ANY THIRD PARTY CLAIMING UNDER OR THROUGH GROWER FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY ECONOMIC DAMAGE OR INJURY TO PROPERTY OR LOST PROFITS, REGARDLESS OF WHETHER GROWER OR THE THIRD PARTY CLAIMING UNDER OR THROUGH GROWER HAS BEEN ADVISED, SHALL HAVE OTHER REASON TO KNOW OR IN FACT KNOWS OF THE POSSIBILITY OF SAID DAMAGES OCCURRING.

8.3 No Representations or Warranties. Nothing in this Agreement will be construed as: (a) a warranty or representation by PVMI as to the validity or scope of any Intellectual Property Rights; or (b) a warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of any intellectual property rights of third parties; or (c) an obligation to bring or prosecute actions or suits against third parties for infringement; or (d) an obligation to furnish any manufacturing or technical information outside the scope of this Agreement; or (e) conferring a right to use in advertising, publicity, or otherwise any trademark

or trade name of PVMI or any of the Tri-State Partner Institutions.

8.4 Indemnification by GROWER. GROWER agrees to indemnify, hold harmless and defend PVMI and the Tri-State Partner Institutions, and their officers, employees, and agents, from and against any and all liability, claims, suits, losses, damages, costs, fees, and expenses of any nature or kind whatsoever arising from: (i) the production, manufacture, sale, use, lease or consumption or advertisement of the Licensed Products; (ii) the practice or exercise by GROWER of the Intellectual Property Rights; (iii) any obligation of GROWER hereunder; or (iv) any of GROWER'S acts related to this Agreement. This indemnification will include, but not be limited to, any product liability. PVMI agrees to notify GROWER promptly and in writing of any claim or suit brought against it in respect of which it intends to invoke the provisions of this Section 8.4. GROWER agrees to keep PVMI informed on a current basis of its defense of any claims to this Section 8.4.

9. Final Agreement and Severability. This Agreement and all schedules or exhibits hereto constitute the entire agreement between the parties hereto and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof . If any provision or provisions of this Agreement, or the application thereof, shall for any reason and to any extent be held to be invalid or unenforceable, the remainder of this Agreement and the application of such provision or provisions to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace such invalid or unenforceable provision or provisions of this Agreement with a valid and enforceable provision or provisions that will achieve, to the extent possible, the economic, business and other purposes of the invalid or unenforceable provision or provisions.

10. Applicable Law and Venue. This Agreement shall be interpreted and enforced according to the internal laws of the State of Idaho, USA, without regard to its conflict of laws principles. Any case or controversy arising out of performance of this Agreement shall be brought in a court of competent jurisdiction in Boise, Idaho, USA.

11. Attorney's Fees. In the event a suit, action, arbitration, or other proceeding is instituted to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover such amount as the court or arbitrator may adjudge reasonable as attorney's fees and expenses in arbitration, litigation at trial, or on any appeal, in addition to all other amounts provided by law.

12. Waiver and Other Remedies. If a party hereto should waive any breach or default of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach or default of the same or any other provision hereof; nor shall any delay or omission on the part of a party hereto to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law or equity on such party, and the exercise of any one remedy shall not preclude the exercise of any other.

13. Incorporation of Exhibits. All schedules and exhibits referenced in and attached to this Agreement are by this reference incorporated into and made a part of this Agreement.

14. Amendment. This Agreement may be modified or amended in part or in its entirety only by the signed, written agreement of the parties.

15. Notices. All notices required by this Agreement shall be in writing and will be mailed by certified mail or delivered in person or sent by facsimile or other reliable electronic transmission equipment to the addresses first given above, or such other address as may be given by written notice to the other. Notice will be effective when delivered if in person or by facsimile or other electronic transmission (with written confirmation report), or on the third business day after depositing as certified mail.

16. Further Assurances. Each party agrees, at the reasonable request of the other, to promptly execute and deliver all such further documents, and to promptly take or forbear from all such action, as may be reasonably necessary or appropriate in order to more effectively confirm or carry out the provisions of this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

[Exhibits A & B on following pages; signatures appear on Page 1]

EXHIBIT A
(University of Idaho Potato Varieties)

<u>Potato Variety</u>	<u>Designation</u>	<u>PVP Filing Date</u>	<u>PVP application no. and/or certificate no.</u>	<u>Elected</u>	<u>Not Elected</u>	<u>Territory (state/country)</u>
Alpine Russet	A9305-10	2008	201000084 issued			
Alturas	A82360-7	2002	200200158 issued			
Blazer Russet	A8893-1	2006	200600201 issued			
Classic Russet	A95109-1	2008	200900441 issued			
Clearwater Russet	AOA95154-1	2008	201000085 pending			
Defender	A90586-11	2004	200400140 issued			
Gem Russet	A8495-1	2000	200100010 issued			
GemStar Russet	A9014-2	2004	200400139 issued			
Highland Russet	A9045-7	2007	200700285 issued			
Huckleberry Gold ¹	A99326-1PY	2011	201200157 issued			
Ida Rose	A82705- 1R	2000	200100009 issued			
Ivory Crisp	NDO1496-1	2002	200200157 issued			
Mountain Gem Russet	A03158-2TE	2015	Pending			
Palisade Russet	A97066-42LB	2012	201200158 issued			
Payette Russet	A02507-2LB	2015	Pending			
Pioneer Russet	A84180-8	2009	200900291 issued	**		
Pomerelle Russet	A02062-1TE	2015	Pending			** Exclusive in Canada only
Premier Russet	A93157-6LS	2007	200700286 issued			
Summit Russet	A84118-3	2004	200400138 issued			
Targhee Russet	A01010-1	2015	Pending			
Teton Russet	A0008-1TE	2011	201200159 issued			
Yukon Gem	NDA5507-3Y	2007	200700287 issued			

EXHIBIT B
(Oregon State University Potato Varieties)

<u>Potato Variety</u>	<u>Designation</u>	<u>PVP Filing Date</u>	<u>PVP application no. and/or certificate no.</u>	<u>Elected</u>	<u>Not Elected</u>	<u>Territory (state/country)</u>
AmaRosa ¹	POR01PG22-1	2011	201100297 Pending			
Cheshire ¹	POR04PG11-1	2015	Pending	**		
Crimson Red	CO086107-1R	2011	201100251 Issued	**		
Klamath Russet	A085165-1	2001	200100094 Issued			
Mazama	ND02686-6R	2001	200100092 Issued			
Modoc	ND04300-IR	2006	200600175 pending			
Owyhee Russet	AO96160-3	2010	201000297 pending			
Purple Pelisse ¹	POR01PG16-1	2010	201000200 Issued	**		
Red Sunset	AO93487-2R	2010	201000319 Issued			
Russet Legend	C0083008-1	1999	9900336 Issued			
Sage Russet	AO96164-1	2011	201100460 pending			
Smilin' Eyes	POR02PG25-5	2015	Pending	**		
Smiling Rose ¹	POR03PG61	2015	Pending	**		
TerraRosa ¹	POR01PG22-12	2014	Pending			
Vermillion ¹	PRO03PG33	2015	Pending	**		
Wallowa Russet	A087277-6	2002	200200252 Issued			
Willamette	A091812-1	2006	200600176 Issued			
Winema	ND02438-6R	2010	200100093 Issued			
Yukon Nugget	POR02PG37-2	2012	201400308 Issued			

** Permission to grow required by private party. Contact PVMI for more information.

¹ Indicates specialty variety with higher royalty rate.