

# General Sub-Licence Terms

## Saskatchewan Food Processors Association Saskatchewan Made Program



**Issue No. 1**

**ISSUE DATE:**

**February, 2009**

### **1. DEFINITIONS** - In these general terms:

“Agreement” means, for each Sub-Licensee, the contract formed by the Association’s acceptance of the Sub-Licensee’s Application;

“Application” means the application submitted to the Association by a Sub-Licensee for a Sub-Licence to use the Marks;

“Association” means the Saskatchewan Food Processors Association, Inc.;

“Saskatchewan Made” means:

- processed food, meat, fish, beverages, agricultural, manufactured and handcrafted products that are processed and packaged in the Province with 51% or more of the direct cost of producing the product in its final form (raw materials, direct labour, variable processing and packaging) originating in Saskatchewan (e.g., raspberry jam); **or**
- any food, meat, fish, beverages or agricultural products which are processed and packaged in the Province using raw materials which are 100% grown, caught, or raised in Saskatchewan (e.g. produce, fruit)

“Saskatchewan Made Sub-Licence” means a Sub-Licence granted by the Association to a sub-Licensee who sells Products (excluding sales of prepared food or beverages at a restaurant) permitting the Sub-Licence to use the appropriate Product Marks in association with Products that are Saskatchewan Made.

“General Terms” means these general Sub-Licence terms and conditions as they may be amended, supplemented or replaced by the Association from time to time.

“House Brand Products” means packaged Products that are processed, packaged or prepared by or for a Retailer and sold by the Retailer or as its own product under its own trade-mark or label;

“Sub-Licence” means the certification mark and official mark Sub-Licence granted to a Sub-Licensee under the Agreement;

“Sub-Licensee” means an individual corporation or other entity whose Sub-Licence application has been accepted by the Association.

“Listed Products” means, for each Sub-Licence, the products described in the product schedules attached to the Application for the Sub-Licence or in a Supplemental Instrument;

“Marks” means the Product Marks, the Restaurant Marks and the Program Marks;

“Product Marks” means the certification marks Saskatchewan Made, Saskatchewan Grown (as shown in Schedule “A” hereto) alone or together with the Program Logo, and all other marks designated by the Association as product marks from time to time;

“Products” means any products which a Sub-Licensee submits for approval as being “Saskatchewan Made”

“Program” means the Saskatchewan Made Program administered by the Association;

“Program Logo” means the main design mark designated by the Association from time to time, which is currently a stylized depiction of sunshine, green farmland and water; as shown in Schedule “A” hereto;

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“Program Marks” means the Program Logo, the mark Saskatchewan Made, and the certification marks as shown in Schedule “A”, and any other trade-marks; certification marks or official marks designated as program marks by the Association from time to time;

“Program User’s Guide” means the guidelines, regulations, rules, standards and policies issued by the Association, as they may be amended, supplemented or replaced from time to time, relating to the use of the Marks;

“Promotional Merchandise” means merchandise that is not a product and is sold or given away to promote the sale of Products (e.g. tee-shirts, hats or aprons);

“Restaurants” means a restaurant, catering or other food service establishment;

“Restaurateur” means the operator or proprietor of a Restaurant;

“Retailer” means any person engaged in the retail sale of Products to the ultimate consumer or user;

“Supplemental Instruments” means any information and terms set out in additional documents and instruments executed by both a Sub-Licensee and the Association that relate to any or all of the Sub-Licence herein, the Marks, or the Program, including applications to renew the Sub-Licence;

2. **INCORPORATION IN AGREEMENT** – These are the General Terms referred to the Application completed by each Sub-Licensee, and they form part of the Agreement;
3. **SUB-LICENCE** – While the Sub-Licence subsists:
  - a. in respect of Saskatchewan Made Sub-Licences, each Sub-Licensee may, and is hereby granted the right to, use the appropriate Product Marks and program Marks in association with the Sub-Licensee’s Listed Products and may reproduce, publish and display those marks for the purpose of advertising or promoting Listed Products on the terms set out in this Agreement.
4. **PROHIBITIONS** – Sub-Licensees agree not to use, display, replicate, publish, expose, transmit, or reproduce either electronically or otherwise (“Use”), or to allow, condone or assist others directly or indirectly in such Use, the Marks or any trade-marks, words, or symbols that incorporate or resemble or are confusingly similar with any of the Marks or any significant feature of the Marks, in any way not expressly permitted by the Agreement.
5. **SASKATCHEWAN MADE SUB-LICENCES** – In respect of Saskatchewan Made Sub-Licences, each Sub-Licensee will:
  - a. use, reproduce, publish and display the Product Marks and Program Marks only for the purpose of distinguishing Saskatchewan Made Products from other Products and services and of promoting the sale of Products having those characteristics;
  - b. subject to Section 6, use the Product Marks and the Program Marks only in association with that Sub-Licensee’s Listed Products and with Promotional Merchandise that promotes those Listed Products;
  - c. use the Product Marks and the Program Marks only in association with and for the promotion of Products that comply with the applicable laws, including food, health, consumer, packaging and labelling laws, and all applicable generally accepted industry standards;
  - d. use the Product Marks and the Program Marks only on Products and promotional Merchandise sold and distributed in Canada and any other countries designated by the Association from time to time;
  - e. use and reproduce the Product Marks and the Program Marks in accordance with the Program User’s Guide and all other terms of the Agreement;
  - f. not use the Product Marks or the Program Marks in any way that might reasonably lead an ordinary consumer to conclude that something is a Saskatchewan Made Product when that is not the case;
  - g. not use the Product Marks or the Program Marks on Promotional Merchandise unless it first secures the Association’s approval of the character and quality of the merchandise, the manner in which the merchandise will be sold or given away and complies with all instructions, policies, standards, guidelines and regulations stipulated by the Association from time to time, whether of general application or any relating to a particular Sub-Licensee; and

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6. **RETAILERS** – Retailers under Saskatchewan Made Sub-Licences agree not to cause any Product Marks or Program Marks to appear on Products or packaging, labelling, or tags attached to any Products, with the exception of House Brand Products covered by a Saskatchewan Made Sub-Licence. Rather, Retailers agree to use the Product Marks and the Program Marks more generally in the manner specified in the Applications that they submit to the Association. Regardless of anything else in the Agreement, Retailers under Saskatchewan Made Sub-Licences agree not to:
  - a. cause the Product Marks and Program Marks to appear on Products or on packaging, labelling or tags physically attached to any products unless the products are Listed Products sold by the retailer as House Brand Products and are produced by a licensed user;
  - b. use the Product Marks for general signage, bags, pamphlets, or any other generally used material unless the Marks are accompanied by additional wording that generally promotes Saskatchewan Made Products in a manner stipulated by the Association of the Program User’s Guide or otherwise;
  - c. use the Program Marks for general signage, bags, pamphlets, or any other generally-used material, except at a premises where Saskatchewan Made Products are available for purchase by the public;
  - d. cause the Restaurant Marks to appear on Products; or
  - e. use the Product Marks or the Program Marks in any way that might reasonably lead an ordinary consumer of Products to conclude that something is a Saskatchewan Made Product when that is not the case.
7. **COOPERATION** – Sub-Licensees agree to cooperate with the Association as reasonably requested by the Association for the purpose of registering the Marks in the Canadian Intellectual Property Office or in any other government registry, or as otherwise required to protect, preserve or enhance the Marks, their associated goodwill, and the Association’s interests.
8. **OWNERSHIP** – Each Sub-Licensee acknowledges and agrees that the Marks are owned exclusively by the Association. If, for any reason, a Sub-Licensee acquires any goodwill or proprietary interest in the Marks, it will hold some in trust for the Association and will transfer, and without any further compensation, legal title to the Association immediately upon receipt of a written demand by the Association to do so.
9. **VERIFICATION** – Promptly, when requested to do so by the Association, each Sub-Licensee will permit and assist the Association’s representatives to:
  - a. enter premises where the Sub-Licensee uses the Marks or stores materials bearing the Marks;
  - b. observe the Sub-Licensee’s activities relating to the Marks and all wares and services in association with which the Sub-Licensee Uses or proposes to Use the Marks;
  - c. inspect Products, promotional material, services, and other materials bearing the Marks in the possession or control of the Sub-Licensee or any representative or contractor of the Sub-Licensee.
10. **SAMPLES** – The Association may at its option, request a sample of the proposed use of the Marks that fully and accurately represents how the Marks will appear on the finished item, in the manner provided for in the Program User’s Guide. Sub-Licensees agree to comply with the comments and requests made by the Association’s representatives in connection with those samples, including requests for information on or samples of the Products or Promotional Merchandise for which the reproduction will be used. If the Association does not communicate any comments or requests to a Sub-Licensee within fourteen days after receiving delivery of a particular sample, then the Sub-Licensee may proceed to use the reproduction depicted in the sample, but the Association reserves the right to request changes to the reproduction of the Products or Promotional Merchandise for good cause upon reasonable notice to the Sub-Licensee. Sub-Licensees agree to comply with any reasonable requests of that type.
11. **BENEFIT OF USE** – Sub-Licensees agree that all the benefit and goodwill associated with use of the Marks by Sub-Licensees will inure entirely to and for the benefit of the Association as licensee of the Marks from the Association. Sub-Licensees agree that no Sub-Licensee will do anything itself and it will not assist, permit or encourage any other person or entity, to do anything that might impair, jeopardize, violate, infringe, or misuse the Marks or the Association’s interest in the Marks, including, without limitation, challenging the validity of the Marks or the Association’s interest in the Marks, or claiming, using, or applying to register any trade-mark, trade name, copyright or design that is identical or confusingly similar to the Marks or that is derived from or based on the Marks.
12. **INFRINGEMENTS** – If, during the subsistence of its Sub-Licence, a Sub-Licensee becomes aware of any use by a third party (other than the Association or another licensee or sub-licensee) of a trade name, trade-mark, get up of goods (e.g. design and colour of packaging; outer appearance of products), or mode of advertising, that might amount to infringement of the Marks, or to unfair competition or passing off in respect of the Marks, then, the Sub-Licensee will promptly report particulars of those activities to the Association.

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13. **CLAIMS BY THIRD PARTIES** – If a Sub-Licensee becomes aware that any third person or entity (other than the Association or another licensee or sub-licensee) alleges that any of the Marks are invalid, or infringe, violate or misuse the rights of any other person or entity, or are open to any other form of attack, then, the Sub-Licensees agree not to make any admissions in respect of those allegations and promptly report the matter to the Association.
14. **CONDUCT OF PROCEEDINGS** –The Sub-Licensees agree that the Association has the right of sole conduct of all legal proceedings and negotiations with third parties relating to the Marks or a Sub-Licensee’s use of the Marks, unless the Association refuses or fails to initiate proceedings within one month after requested to do so by a sub-licensee, in which event, that Sub-Licensees will be entitled to institute infringement proceedings in respect of its own interests. Subject to the preceding section, sub-licensees will be entitled to defend themselves at all times from actions by third parties. The Sub-Licensees agree that the Association will not have any liability to any sub-licensee for failure to defend or prosecute actions or any other legal or administrative proceedings and the Sub-Licensees agree to indemnify the Association for its costs associated with Sub-Licensee actions by or against third parties in respect of the Marks.
15. **ASSIGNMENT/SUB-LICENCE** – Sub-licensees may not assign, sub sub-licence, or in any other way dispose of or extend the benefit of the Marks, the Application, the Sub-Licence or the Agreement to any third party. A change in control of a Sub-Licensee, or an amalgamation, receivership or bankruptcy of a Sub-Licensee will be considered to be such an assignment. If the Association consents to an assignment, sub sub-licence, or other such activity on a particular occasion, further consents are required for all subsequent occasions. The Association may assign an Agreement as it sees fit, in which event, it will have no further obligation or liability under the Agreement and the Sub-Licensees hereby expressly waive all such obligations and liabilities. Sub-Licensees agree to the assignment to the Ministry by the Association upon the expiration, non-renewal or termination of the Association’s licence.
16. **DURATION** – Each Sub-Licence will commence on the date that a duly completed Application has been delivered by the Sub-Licensee to the Association along with the required fees and will end on the 1<sup>st</sup> anniversary of that date unless sooner terminated or renewed pursuant to the terms of the Agreement. The Sub-Licence may be renewed annually only with the mutual consent of both parties; provided that the Sub-Licensee has paid any and all renewal fees established by the Association for the ensuring year. A particular Sub-Licence may be terminated by the Association or the Sub-Licensee for its own convenience by giving the other written notice of termination for the convenience, which will be effective 120 days after the notice is delivered. If a Sub-Licence is terminated by the Association for any reason, other than for cause, then the Association will return a portion of the terminated Sub-Licensee’s fee paid for the year in which such termination occurred pro-rated to the date of such termination. In addition, the Association may terminate any Sub-Licence earlier for cause:
  - a. if the Sub-Licensee materially defaults in observing or performing any of its material obligations under the Agreement and then fails to correct the default within thirty calendar days following the date it receives a written demand from the Association to do so;
  - b. if the Association is satisfied that continuing the licence will be prejudicial to the proprietary basis of the Marks, or could lead to the infringement, violation, or misuse of the rights of a third party;
  - c. if the Sub-Licensee becomes insolvent, or commits an act of bankruptcy, or makes an assignment for the benefit of creditors or if a receiver or receiver-manager is appointed for the Sub-Licensee or any of its assets, or if any proceeding in bankruptcy, receivership, winding-up or liquidation is initiated in respect of the Sub-Licensee, or if the Sub-Licensee ceases carrying on or threatens to cease carrying on business; or
  - d. by giving the Sub-Licensee written notice of termination which will be effective immediately upon delivery to the Sub-Licensee.
17. **TIME AND WAIVER** – Time is of the essence of this Agreement. If the Association waives a particular default of the Sub-Licensee, such waiver will not affect or impair the rights of the Association in respect of any other default by the Sub-Licensee. If the Association delays or fails to exercise any rights in connection with any default of the Sub-Licence, such action will not affect or impair the rights of the Association in respect of that default or any other default of the Sub-Licensee. In all events, time will continue to be of the essence without the need for specific reinstatement following particular waivers, extensions or delays.
18. **FURTHER ASSURANCES** – The parties will promptly do such acts and execute and deliver to each other such further instruments as may be required to give full effect to the intent expressed in this Agreement.
19. **COMMUNICATION** – All notices and other communications that the parties give each other in connection with this Agreement may be made in writing and delivered by hand or sent by telefax to the recipient at the address or telefax numbers set out in the Application or as communicated by the parties to each other under this Section. Proof of delivery in that manner will constitute proof of receipt.

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**20. LIMITATION OF LIABILITY** – The Association, its members, directors, employees and representatives make no representations or warranties to the Sub-Licensees regarding the Marks, the Sub-Licence program, including, without limitation, whether use of the Marks in association with any Sask product specified in the Application is permissible under consumer protection and labelling laws of Canada. The Association, its members, directors, employees and representatives have:

- a. liability to Sub-Licensees or to any other party dealing with Sub-Licensees or with Products, Promotional Merchandise or services sold, distributed or supplied by Sub-Licensees, in any way, whether or not relating to an Application, an Agreement, the Marks, or the Program, other than the obligation to observe and perform the Association’s obligations hereunder; and
- b. no monetary liability to Sub-Licensees or to any party dealing with Sub-Licensees or using the Products, Promotional Merchandise or the services sold, distributed or supplied by Sub-Licensees, in any way, whether or not relating to an Application, an Agreement, the Marks, or the Program; even if the liability or monetary damages would otherwise arise at law and even if resulting from negligence.

Each Sub-Licensee specifically waives all claims it would otherwise have but for the foregoing provisions of this section. If despite, the foregoing waiver and limitation of liability, the Association or any of its members, directors, employees or other representative is found to be liable to pay monetary damages to a Sub-Licensee, or to any other parties dealing with a Sub-Licensee or with Products, Promotional Merchandise or services sold, distributed or supplied by a Sub-Licensee, whether or not in connection with an Application, an Agreement, the Marks, or the Program, then, all such liability is limited in the aggregate to an amount equal to the usage fee paid to the Association by that Sub-Licensee, if any.

**22. LAW/DISPUTES** – All Applications and Agreements are governed by the laws of Saskatchewan. Any disputes between a Sub-Licensee and the Association that arise in connection with an Application, an Agreement, the Marks, or the Program may be resolved only by confidential arbitration under the International Commercial Arbitration Act. The place of the arbitration will be either Regina or Saskatoon, Saskatchewan, as determined by the Association. Each Sub-Licensee agrees not to disclose to any third parties any information regarding such arbitration, whether before, during or after the arbitration is held.