

PARTICIPANT AGREEMENT
for
POTATO CULTIVARS

THIS AGREEMENT is made this _____, 20____, by and between COLORADO CERTIFIED POTATO GROWERS ASSOCIATION, INC., a Colorado not-for-profit corporation (hereinafter called "CCPGA"), and the person or persons signing this Agreement (hereinafter, whether one or more, called "Participant").

RECITALS

A. CCPGA and Colorado State University ("CSU") have entered into agreements between them to establish a program (the "Program") for the development, propagation, production and distribution of new potato cultivars developed at CSU and considered by the CSU Agricultural Experiment Station and/or the CSU Cultivars Release Committee to be appropriate for exclusive release in Colorado and elsewhere through the Program. These agreements impose certain requirements upon CCPGA, some of which are carried out by the provisions of this Agreement, and some of which restrict certain possible activities of CCPGA with respect to cultivars included in the Program.

B. The Program is intended to enhance the value of new potato cultivars to be included in the Program, protect varietal integrity and provide additional funds for potato research at CSU.

C. CCPGA is or will be the exclusive licensee by transfer and assignment from CSU of the potato cultivars listed in Schedule A attached to this Agreement and incorporated herein by reference.

D. CCPGA and Participant desire for Participant to promote, grow, handle and sell certified seed of these potato cultivars pursuant to the terms, provisions and conditions of this Agreement.

E. Other persons will also have the right and license from CCPGA to promote, grow, handle and sell certified seed of the potato cultivars listed in Schedule A. All seed growers who have a license from CCPGA for those cultivars, including Participant, are referred to as a group in this Agreement as "Grower Participant."

AGREEMENTS

IN CONSIDERATION of the foregoing and the mutual provisions of this Agreement, the parties agree:

1. Definitions.

A. Except for words and phrases defined specifically in this Agreement, where words and phrases used in this Agreement have been defined in the federal Plant Variety Protection Act (the "PVPA") or in seed potato certification standards established by the seed potato certification agency of the state in which the Participant produces seed potatoes, the words and phrases shall have the meanings given to them in the PVPA or the certification standards; provided, that in the case of a conflict between definitions, the provisions of the PVPA and then of the certification standards shall control except that the designations of certified seed potatoes (e.g., tissue culture clones, plantlet, mini-tuber, G1, G2, G3, G4, G5, G6 as in field generation or years in the field, registered, certified or other classes, etc.) shall be defined and determined as provided by the seed potato certification agency of the state in which the Participant produces seed potatoes.

B. The term "Included Cultivar" shall mean any cultivar (a) listed on Schedule A attached hereto and (b) any cultivar, which is being transferred by CSU to CCPGA, seed for which is acquired by Participant prior to the cultivar being added to Schedule A. Schedule A may be amended from time to time by the parties to include or exclude particular cultivars or change other information on Schedule A in which case the Schedule A in effect when a particular action is to be taken or a particular determination is to be made shall control for that purpose. CCPGA shall maintain a copy of each Schedule A which at any time was applicable to this Agreement.

C. When used in this Agreement, unless the context or this Agreement specifically specifies otherwise, "certified seed" shall have the meaning given to it in the "Colorado Rules and Regulations for Certification of Seed Potatoes" as approved from time to time by the Board of Governors of the Colorado State University System, which in general provide that the potatoes were inspected while growing in the field and after being harvested and were thereafter duly certified by the official state certifying agency as provided in its certification rules and regulations. In this regard it is contemplated that Participant will receive certified seed stocks only from CSU or a licensed Participant for the cultivars listed in Schedule A.

2. Program and Parties.

A. CCPGA has received or will receive its exclusive license from CSU to the cultivars covered or to be covered by this Agreement in connection with the Program.

B. CCPGA shall be entitled to establish rules and procedures (herein called the "Rules and Procedures") applicable to the Program. CCPGA will receive advice regarding the Rules and Procedures from an advisory committee (herein called the "Management Committee") which is composed of representatives from CSU (one representing the Potato Certification Service, "PCS"), the CPAC Research Subcommittee (formerly the San Luis Valley Research Center Committee ("SLVRCC")), the Colorado Potato Administrative Committee (Area II) ("CPAC") and CCPGA, and has been established pursuant to the agreements among CSU and CCPGA. The Management Committee is intended to provide advice to CCPGA in connection with the Program. CCPGA shall have the sole and exclusive right to establish, amend or modify the Rules and Procedures from time to time and at any time, but no amendment or modification will impose an obligation or expectation on CSU without its prior written consent and agreement or which would materially reduce the reasonably expected returns to CSU from a cultivar.

C. Participant agrees to be bound by the terms of this Agreement and all laws and governmental and other rules, regulations, and standards applicable to an Included Cultivar.

D. CCPGA may contract with PCS, other state certification agencies, seed potato certification agencies of other countries, or other persons to assist it in carrying out its obligations under this Agreement. In so doing, CCPGA may establish procedures in coordination or under agreements with PCS or another person to facilitate the administration of matters under this Agreement.

3. License; Participant Qualifications.

A. CCPGA grants to Participant, and Participant accepts from CCPGA, a non-exclusive right and license so long as this Agreement is in effect to promote, grow, handle and sell each Included Cultivar in accordance with the terms provided in this Agreement.

B. To be eligible to be and remain a Participant and be entitled to the right and license granted in the preceding sentence, a person (a) must be a member in good standing of CCPGA or the certification organization in another state (if applicable), (b) must be approved by CCPGA, (c) shall have been subject to an opportunity to have been reviewed by CSU, and (d) must enter into and abide by this Agreement.

C. CCPGA shall notify CSU of all proposed Participants for the Program. If CSU has reason to object to the inclusion of any person as a Participant, it is to inform CCPGA, on an advisory basis, of its objection within ten (10) days after receiving the notice of proposed Participant. In making its final decision regarding the inclusion of persons as Participants, CCPGA intends to give due consideration to any objections received, but the decision of CCPGA as to the selection of Participant shall be final. Acceptance of Participant and renewals shall be made by CCPGA at times established by CCPGA's Board of Directors. The Board shall at least consider applications for new Participant Agreements and renewals of existing ones at a meeting in January of each year.

4. Exclusions.

A. This Agreement shall apply only to certified seed of potato cultivars listed in Schedule A and prior generation seed of Included Cultivars. It shall not apply to, and there is expressly excluded from the term "Included Cultivar": (i) any variation or derivation from the listed cultivars which under any applicable standard would not be included within the cultivars named in Schedule A unless a specific addition is made to Schedule A to cover the variation or derivation, (ii) any cultivar with respect to which CSU does not have control of the release even if CSU has participated in its development, or (iii) any cultivar the development of which has been conducted by CSU under contract with or pursuant to funding provided by any third party. By being a party to this Agreement, Participant shall not thereby be construed as having any right (preferential or otherwise) in or to any variation or derivation of an Included Cultivar and CCPGA shall not be required to make any particular cultivar available to Participant as an Included Cultivar except in its sole discretion and on terms and conditions established by CCPGA.

B. The production and availability of certified seed of an Included Cultivar produced by a person who is not a party to this Agreement is not covered by this Agreement, except that Participant shall not acquire certified seed of an Included Cultivar from a third party for reproduction or resale as certified seed without the prior written consent of CCPGA. If a Participant desires to obtain certified seed for any Included Cultivar produced by a licensed third party, the Participant shall make appropriate arrangements with CCPGA and the third party to obtain and pay for the certified seed. Sales by Participant of any seed of an Included Cultivar for recertification (including sales to other Grower Participant) are strictly prohibited except (i) as specifically provided otherwise in or pursuant to this Agreement or in a manner permitted pursuant to this Agreement or (ii) with CCPGA's prior written approval.

5. Cultivar Ownership and Protection.

A. When a cultivar is transferred to CCPGA for inclusion in the Program, CCPGA will have the exclusive license for the cultivar subject to terms and conditions of the agreements between CSU and CCPGA. Unless CSU and CCPGA decide otherwise, protection for each Included Cultivar is to be sought under the PVPA in the name of CCPGA. If protection is obtained for an Included Cultivar (and also during the application process), the PVPA prohibits the production and sale of Included Cultivar seed potatoes except as certified seed. Under the Program no one may produce or sell certified seed of the Included Cultivar other than a person licensed to be a participant in the Program by CCPGA. One of the aspects of the Program is an intention by CCPGA to enforce vigorously the protections of the PVPA for each Included Cultivar unless in its sole judgment enforcement is not appropriate for a particular Included Cultivar or under particular circumstances. Nothing in this Agreement shall, however, require CCPGA to protect the rights of CSU, Participant or any other person to an Included Cultivar or provide any guarantee to CSU, Participant or another person that CCPGA shall take any steps to enforce the protections of the PVPA, any other applicable law or regulation, or to take any other action for the benefit of CSU, Participant or another person with respect to any Included Cultivar and CCPGA shall under no circumstance be required to do so. CCPGA shall have the right to determine in the exercise of its reasonable judgment when the bringing of any enforcement action could be effective, economically viable or otherwise appropriate.

B. Except as provided in Section 12C of this Agreement, Participant shall have no right to undertake any independent actions or other measures to enforce the provisions of the PVPA in the name of Participant, CCPGA or any other person, individually or as a class. If Participant shall undertake any independent actions or other enforcement measures, CCPGA may notify Participant to cease and desist from pursuing the action or other measure or permit CCPGA to be substituted for the Participant in pursuing the action or other measure. If after receipt of the notice, Participant does not cease and desist or permit CCPGA to be substituted for Participant (if requested by CCPGA) within thirty (30) days of the date of the notice, CCPGA shall have the right to terminate this Agreement upon notice to Participant and seek appropriate remedies to cause Participant to cease and desist from pursuing the action or other measure.

6. Seed Availability, Distribution and Pricing.

A. All seed of an Included Cultivar will be handled through the regular seed certification process established by PCS or the seed certification agency in another state where the seed is produced. CCPGA's obligation to make arrangements for Participant to acquire seed shall be fulfilled by CCPGA informing Participant and other persons

having contracts with CCPGA similar to this one (herein called "Grower Participant") as to the identity of persons who have seed available.

B. CCPGA retains the right to restrict production acreage or volume that the Participant is allowed to grow and market in accordance with guidelines established from time to time. If CCPGA elects to establish acreage limitations, then the following (in addition to any other guidelines established by CCPGA) shall apply:

a. At a meeting of the CCPGA Board of Directors during the month of January of each year, the Board shall establish acreage allotments for the ensuing crop year for production from seed of each Included Cultivar. Acreage allotments shall be established separately for each Included Cultivar. It is contemplated that acreage allotted to growers outside the State of Colorado will not exceed fifty percent (50%) of the total acreage allotment in the United States in any one year for any Included Cultivar. CCPGA may, but shall not be required to, consult with Grower Participant both in and outside the State of Colorado before determining the acreage allotments for each Included Cultivar.

b. Among, but not restricted to, the criteria which the CCPGA Board of Directors may use in establishing acreage allotments for particular Included Cultivars are: (a) geographic areas with respect to the marketing plans received by CCPGA from Participants or persons applying to become Grower Participant, (b) competition among seed growers within and outside the State of Colorado, and (c) disease tolerances in connection with the production of potatoes and potato seed between Colorado and other geographic areas. The CCPGA Board may restrict Grower Participant in all or different geographic areas to sale of Blue tag seed only.

c. CCPGA may prohibit any additional Grower Participant to be allowed into the Program with respect to a particular Included Cultivar at any time. The prohibition may be applicable to all additional Grower Participants or only to Grower Participants in specified geographic areas. A determination to prohibit additional Grower Participants must be made at the annual Board of Directors meeting held in January of each year.

d. Qualified Grower Participants and applicants to be Grower Participants will be accepted as Grower Participants in each year for each geographic area in which an Included Cultivar is to be produced in the order in which their applications for renewal or to become a new Grower Participant are received by CCPGA without regard in any way to seniority of participation in the Program.

C. Participant must present an annual marketing plan to CCPGA each year and a comprehensive marketing plan prior to the renewal of this Agreement. The marketing plan shall set forth information requested by CCPGA including acreage and volume desired by Participant. The CCPGA will review the plan and, if it approves Participant for continued participation in the Program, it will provide agreement in a timely manner before Participant's planting season.

D. CCPGA may, but shall not be required to, provide to Participant suggested prices at which certified seed of Included Cultivars may be sold, but under no circumstance shall CCPGA establish any compulsory or minimum price. Participant shall be entitled to sell certified seed at any price which Participant may establish.

7. Warranty Provisions

A. CCPGA shall use its best efforts to cause persons producing seed for distribution pursuant to agreements similar to this one to conform to the label, tag, certificate or other official descriptions within tolerances allowed by law for a period equal to the longer of (i) six months from the date of shipment or acquisition of the seed by Participant or (ii) the applicable warranty period by statute in the state where a sale of the seed was made. Because, however, CCPGA is not producing or selling any seed which will be acquired by Participant, CCPGA MAKES NO WARRANTY TO PARTICIPANT REGARDING ANY SEED WHICH PARTICIPANT ACQUIRES PURSUANT TO THE PROGRAM.

CCPGA EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR

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PURPOSE. IN NO EVENT SHALL CCPGA BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER AS A RESULT OF CCPGA'S BREACH OF ANY WARRANTY OR ANY OTHER OBLIGATION UNDER THIS AGREEMENT.

B. Participant warrants to CCPGA and shall warrant to any purchaser of seed from Participant that the seed sold by Participant shall conform to the label, tag, certificate or other official descriptions within tolerances allowed by law for a period equal to the longer of (i) six months from the date of shipment by Participant or (ii) the applicable warranty period by statute in the state where a sale of the seed was made. Participant shall make the foregoing warranty in writing to any purchaser of seed of an Included Cultivar from Participant, but may, if Participant so desires, limit any warranty given by Participant to that express warranty by a written statement or statements to Participant's purchaser(s) substantially similar to the following:

THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER AS A RESULT OF SELLER'S BREACH OF ANY WARRANTY OR ANY OTHER OBLIGATION WITH RESPECT TO THE SEED SOLD.

C. If at any time CCPGA is found liable to a person who purchased seed from Participant because of a deficiency in the seed resulting from any act or omission of Participant, or because of any breach of a warranty by Participant with respect to the seed, Participant shall indemnify and hold CCPGA harmless from any and all loss, damage or expense, including court costs and attorneys fees, incurred by CCPGA thereby.

8. Participation Fee.

A. Upon the execution of this Agreement and upon the addition of any additional cultivar(s) to the Included Cultivars listed in Schedule A, Participant shall pay to CCPGA an annual or one time participation fee or periodic fee (as determined by CCPGA with the advice of the Management Committee) for the particular Included Cultivar in an amount or amounts established by CCPGA. CCPGA will establish and may subsequently adjust the amount of the generally applicable participation or other fee for each Included Cultivar listed in Schedule A. The participation or other fee may be in different amounts for persons who become Grower Participants in different years, in different geographic areas, for different Included Varieties, or for other reasons determined by CCPGA. CCPGA reserves the right to establish a separate or different participation or other fee for specific persons if it's Board of Directors, in its sole discretion, determines that circumstances exist which justify a separate or different participation fee being charged in the best interests of the Program. Participant waives any right or privilege to object to different participation or other fees being charged to different persons than that paid by Participant.

B. Participant acknowledges that a person, who does not become a Participant in the Program with respect to an Included Cultivar in the first calendar year of that cultivar's release but becomes a Grower Participant with respect to that Included Cultivar in a later calendar year, may be required to pay a participation fee which is more or less than the first year participation fee and that Grower Participants located in different geographic areas from the area in which Participant is producing seed potatoes of an Included Cultivar may pay different participation or other fees than Participant.

C. CCPGA intends that the participation or other fee shall be utilized primarily to cover administrative costs of including the Included Cultivar as an exclusive release in the Program and may include, but not be limited to, the cost of establishing protection under the federal Plant Variety Protection Act, as amended, to pay for advertising and promotion, and to provide monies for the enforcement of plant cultivar protection for cultivars included in the Program.

D. The participation or other fee shall be billed by and remitted to CCPGA which shall apply the funds collected to the foregoing purposes or any other purposes CCPGA determines are appropriate.

E. The participation or other fee shall be paid by each Grower Participant under contract with CCPGA who receives the right to plant an Included Cultivar in connection with the Program. The participation or other fee shall be in addition to the costs to the Participant of any prior generation seed.

9. Royalties.

A. Participant shall pay CCPGA a royalty on the sale or other transfer of any seed of all Included Cultivars at the rates established from time to time by the Management Committee which are applicable at the time of the sale or utilization by Participant. In all cases Participant as seller, and not the buyer (including other Grower Participants) from Participant, shall be liable to CCPGA for all royalty payments. The Management Committee may change the amount of royalty for any succeeding year. CCPGA will notify Participant of the change prior to the customary planting time for seed of an Included Cultivar subject to the royalty.

B. Where Participant has independent certified seed operations and commercial operations under the same legal entity or farming system, a transfer or exchange of certified seed of Included Cultivars from the seed operations to the commercial operations, or use by the commercial operations of certified seed produced or acquired by the certified seed operations, shall be deemed a sale or transfer of the seed for purposes of this Agreement at the time of transfer, exchange or use. A royalty of \$0.25 per hundredweight of certified seed so transferred, exchanged or used for seed shall be payable by Participant in the same manner as if the certified seed were sold to an independent third party. Whenever certified seed is moved from the certified seed operation to the commercial operation, a royalty shall be due and payable.

C. Participant shall provide to CCPGA: (i) a report of all sales of seed of Included Cultivars in the previous twelve months within 30 days after the report is requested by CCPGA and (ii) payment of all unpaid royalties due under this Agreement within 30 days after receipt of a billing from CCPGA for the royalty.

D. Upon request from CCPGA, Participant shall provide to CCPGA:

- a. a report of acreages planted by Participant with Included Cultivars.
- b. a report of production by Participant of Included Cultivars from the previous harvest.
- c. a report of estimated production by Participant of Included Cultivars for the next succeeding harvest.

E. Participant, whether acting as a buyer or a seller of seed of an Included Cultivar, shall keep and maintain full, complete and accurate records to demonstrate relevant sales and purchases (disposition of the crop), amounts of royalties due, identification of seed subject to this Agreement and any and all other information necessary or appropriate to permit the information and payments required by this section to be compiled and audited.

F. If Participant shall dispute the amount of royalties billed to Participant by CCPGA, the Management Committee may be requested to make an advisory determination of the amount of the royalties, but the decision of CCPGA shall be final.

G. All royalties shall be billed and collected by CCPGA with such assistance from other persons (including PCS) as CCPGA shall determine to be appropriate. Payment to CCPGA of any invoiced amounts will be required to be received by CCPGA within 30 days after receipt of the invoice from CCPGA.

H. Royalties may be in different amounts for persons who become Grower Participants in different years, in different geographic areas, for different Included Varieties, or for other reasons determined by the Management Committee. The Management Committee shall have the right to establish separate or different royalties for specific circumstances if the Management Committee determines the circumstances justify separate or different royalties being charged in the best interests of the Program. Participant waives any right or privilege to object to different royalties being charged to different persons than those paid by Participant.

I. Nothing in this Agreement shall be construed to modify or supersede CCPGA's or PCS's customary procedures for establishing and collecting their charges for services rendered or goods provided by one of them with respect to any seed of an Included Cultivar, including without limitations PCS's charges for services rendered or goods provided by it with respect to any seed certification for seed of an Included Cultivar.

10. Late Payments. CCPGA may assess interest at a rate of up to 1.5% per month (or any portion of a month), not compounded (equating to an annual percentage rate (APR) of 18%), on the amount of any unpaid royalty due to CCPGA from and after 30 days following the due date until paid. If Participant shall fail to make any payment to CCPGA on or before 90 days following its due date, Participant shall be liable to CCPGA for all costs of collection including court costs and attorneys fees incurred by CCPGA in collection of the amounts due and may be subject to being excluded from any provisions of the Program.

11. Records Inspection.

A. Any and all records which Participant is required to keep and maintain pursuant to this Agreement shall be open to inspection and audit by CCPGA, or its duly appointed representatives, upon demand during reasonable business hours.

B. If following an inspection of Participant's records it is found that Participant owes CCPGA any amounts which exceed amounts paid to CCPGA by Participant by more than \$200, Participant shall pay to CCPGA the actual out of pocket costs incurred by CCPGA for examining Participant's records including the prorated costs of compensation of employees of CCPGA and their expenses.

C. Participant consents and gives permission to CCPGA and PCS that they shall be entitled to give and to receive from each other or to and from the seed certification agency in another state or country where seed of an Included Cultivar is produced all information provided by Participant to CCPGA or PCS or to a seed certification agency in another state or country. CCPGA shall use reasonable means to keep the information made available or received pursuant to this subsection from being disseminated to the public or from being used for any purposes except purposes directly related to this Agreement, the Program or to meet applicable requirements of law.

12. Additional Distribution Provisions.

A. Following the development of certified seed for an Included Cultivar in a manner and quantity determined by CCPGA, CCPGA shall authorize the seed for the Included Cultivar to be made available for general public distribution in accordance with guidelines established by CCPGA.

B. Following authorization of distribution of seed of an Included Cultivar to the general public, Participant shall use all reasonable efforts to inform purchasers of certified seed that it is protected under the PVPA and that it is unlawful to sell the potatoes or seed grown from the certified seed as seed potatoes. CCPGA shall use reasonable efforts to assist Participant in making this information known to persons who will acquire certified seed from Participant. If CCPGA shall establish guidelines or required language for providing the information to purchasers, Participant shall follow the guidelines and use any required language provided by CCPGA. In the absence of any language being specified by CCPGA, Participant will use and apply the phrases "*U.S. PLANT VARIETY PROTECTION GRANTED OR APPLIED FOR*" and "*UNAUTHORIZED PROPAGATION PROHIBITED*" in connection with any sale or other distribution of seed of an Included Cultivar.

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C. Participant shall use all reasonable efforts to monitor whether any seed of an Included Cultivar in which Participant has involvement or over which Participant has control is being produced or sold as seed by unauthorized persons.

D. If Participant shall become aware or have knowledge of the violation of any applicable law or Rule or Procedure governing or applicable to the growing or distribution of an Included Cultivar by any Grower Participant or any other person, Participant shall promptly notify CCPGA and provide all information available to Participant regarding the violation for review by CCPGA.

E. If any person other than a Participant has the right by law or governmental rule or regulation to acquire seed of an Included Cultivar for the production of additional seed of the Included Cultivar, CCPGA intends to use reasonable legally permitted efforts to protect and preserve the uniqueness and integrity of the Included Cultivar.

F. Sales or other transfers of seed of Included Cultivars (other than seed originally distributed by CSU) may be permitted to be made by a Participant through a dealer network if, but only if, the network of dealers is approved by CCPGA. Any such sales shall be in accordance with any guidelines which may be established by CCPGA.

G. Certified seed of a specific Included Cultivar may be sold only by Grower Participants who are Grower Participants with respect to that Included Cultivar, or if approval has been given by CCPGA, by a subcontract grower or dealer under a Grower Participant. In the latter case, the Grower Participant shall remain liable for all fees, royalties and other charges which become due and owing by reason of the sales. If an unauthorized person shall have received seed from a Grower Participant, the Grower Participant shall be liable for any fees, royalties and other charges which should have been due and owing from the unauthorized person had the person been properly approved.

H. CCPGA and PCS have agreed that, to the extent permitted by law, if PCS receives an application for certification of seed of an Included Cultivar from a person who is not a Grower Participant, PCS shall refuse to provide the certification. After consultation with CSU, PCS shall have the final determination regarding any legal limitations upon its ability to withhold certification upon its having received a request for certification. CCPGA shall seek to have this same provision applied by the seed certification authority in any jurisdiction where seed from a particular Included Cultivar is produced.

I. If for any reason, including a recommendation from CSU with which CCPGA shall concur, CCPGA shall determine there exists an excess supply of seed for any Included Cultivar included in the Program, it shall notify CSU and the Grower Participants in the Program who hold seed of the Included Variety of the amount of the excess. Participant and other Grower Participants shall then be required to dispose of the excess seed in accordance with methods established by CCPGA. Methods of disposition may include holding, marketing or destroying the excess seed, but in no event shall the excess seed be marketed by cultivar name or in any manner which would violate or infringe upon the rights of CCPGA in the Included Cultivar (including those under the PVP or any applicable state law) without the specific prior written approval of CCPGA.

13. No Assignment; Subcontract Growers.

A. The rights under this Agreement are personal to Participant. The obligations of Participant are being accepted by CCPGA based upon Participant's particular abilities to perform the obligations. The rights and obligations of Participant may not be assigned or otherwise transferred in any manner without the prior written consent of CCPGA which may be withheld for any or no reason. The preceding sentence applies to the sale of seed of any Included Cultivar to be used for seed, except to other Grower Participants as permitted in this Agreement or policies (including the Rules and Procedures) established by CCPGA, and includes, without limitation Participant having seed of an Included Cultivar grown or sold by a subcontract grower or a dealer without permission of CCPGA.

B. If Participant is permitted by CCPGA to have seed grown and sold by a subcontract grower, sold by a dealer, or distributed to other persons, the activities shall be done in the name of Participant. Participant shall in all events retain control over the activities of the subcontract grower, dealer or recipients in a distribution and remain liable for all fees, royalty payments and other charges due to CCPGA with respect to seed produced by the subcontract grower or sold by the subcontract grower, dealer or recipient in a distribution.

C. Neither Participant nor any other Grower Participant nor CSU shall be permitted to sell seed of an Included Cultivar for recertification to another seed potato grower without a previously approved participant agreement with CCPGA having been signed by the proposed buyer prior to the sale. Grower Participants who are laboratories shall likewise be required to comply with this and all other provisions of this Agreement.

14. Marketing, Promotion and Advertising. CCPGA, in consultation with the Management Committee, may develop such marketing, promotion and advertising programs in support of an Included Cultivar as it, in its sole discretion, determines to be appropriate or necessary to facilitate the acceptance of the Included Cultivar in the market place and the sale of its certified seed by Participant and Other Grower Participant. Nothing in this Agreement shall be construed, however, to require CCPGA to develop or provide any marketing, promotion or advertising program.

15. Certain Additional Obligations of Participant.

A. All seed produced by Participant under this Agreement shall be produced according to the isolation, cropping, production, harvesting and other requirements, rules and regulations of the seed certification agency of the state where the seed is produced.

B. Participant shall use all reasonably available means to ensure that the growing, handling and sale of seed of an Included Cultivar will result in high quality seed products conforming to minimum standards established by law, CCPGA or the seed certification agency of the state where the seed is produced.

C. Participant shall use Participant's best efforts to promote and maximize the sale of certified seed of an Included Cultivar produced by Participant when the seed is available for sale to the general public.

D. Seed of an Included Cultivar shall not be sold except in accordance with applicable provisions of law, the provisions of this Agreement and any applicable requirements of a seed certification agency of the state where the seed is produced or sold. In the absence of provisions of law or in this Agreement, the seed of an Included Cultivar shall not be sold other than in bulk or in bags of a size approved by CCPGA.

E. All appropriate actions permitted to be taken by Participant shall be taken by Participant to maintain the integrity of each Included Cultivar and to preserve and increase the benefits of the PVPA.

F. No seed of an Included Variety may be sold outside the United States of America by Participant without the written permission of CCPGA, which permission may be withheld for any or no reason.

16. Representations of Participant. Participant represents and warrants to CCPGA that:

A. Participant is, and at all times while this Agreement is in effect shall remain, a member in good standing of CCPGA or the certification agency or certified seed growers organization in another state where seed of an Included Cultivar may be grown by Participant.

B. Participant shall conduct all of Participant's activities under or in connection with this Agreement in accordance with the provisions of this Agreement, applicable provisions of state law, the PVPA, and applicable rules and standards of the seed certification agency of the state in which seed is produced or sold by Participant.

17. Multiple Participants. In the event this Participant Agreement covers or includes more than one person, the persons constituting the Participant under this Agreement shall be jointly and severally responsible and liable for all obligations of the Participant under this Agreement.

18. Confidential Information of CCPGA and Others. From time to time, CCPGA may reveal confidential information to Participant concerning licensed cultivars or new products which is identified as proprietary to or a trade secret of CCPGA, CSU or a third party. That information is for use by Participant in making production and marketing decisions. During the period when this Agreement is in effect and for an additional period of three (3) years after its termination, Participant shall not reveal the information to any other person or entity without the express written consent of CCPGA, CSU or the third person. The information shall be protected by Participant while this Agreement is in force and for the three (3) year period after its termination.

19. Term and Termination.

A. This Agreement shall commence on the effective date specified below and shall be and remain in force and effect and apply to sales of seed of Included Cultivars to Participant by CCPGA or other Grower Participants until the termination date shown on the signature page, after which the Participant may request a renewal based on standards provided in the Rules and Procedures. Any renewal shall be for a five (5) year period. So long as this Agreement remains in effect and the Participant is in good standing, then the Participant may apply for additional renewals. In the event of non-performance by Participant, in lieu of termination of the Agreement or non-renewal, CCPGA may, but shall not be required to, allow the Participant to apply for a one (1) year probationary renewal. At any time following the termination of this Agreement in its entirety or with respect to a particular Included Cultivar, whether by non-renewal or otherwise (a) all sales of seed of an Included Cultivar grown by Participant in a manner described in this Agreement shall be subject to the royalty provisions of this Agreement so long as an effective certificate under the PVPA remains in effect and is held by CCPGA with respect to the Included Cultivar, (b) all provisions of this Agreement relating to payments required to be made by Participant to CCPGA for sales of seed made by Participant prior to or after termination of this Agreement in its entirety or with respect to a particular Included Cultivar shall remain applicable until full payment has been made to CCPGA, and (c) any certified seed of an Included Cultivar owned, held or controlled by Participant, directly or indirectly, at the time of termination shall be disposed of only in accordance with this Agreement or as otherwise provided by CCPGA.

B. In addition to other rights to terminate this Agreement provided elsewhere in this Agreement, this Agreement may be terminated in its entirety or with respect to a particular Included Cultivar alone by either party upon at least 90 days prior written notice to the other party given at least 90 days prior to commencement of the planting season in any year.

C. Upon any termination of this Agreement, CCPGA may require Participant to return to CCPGA any supplies which Participant has been required to purchase from CCPGA under the terms of this Agreement with respect to one or more Included Cultivars. In that case, CCPGA shall reimburse Participant for Participant's cost for the supplies. If CCPGA does not require the return of the supplies, Participant shall be entitled to use the supplies for other purposes but shall obliterate any designation on the supplies which references a particular Included Cultivar.

20. Remedies. In addition to any other remedies provided by this Agreement, the following shall apply:

A. If Participant shall be found by CCPGA to be selling any type of seed regardless of cultivar (a) in violation of the laws of any state or the PVPA, or (b) in violation of this Agreement, or (c) in violation of the Rules and Procedures, or (d) in violation of standards or requirements of the seed certification agency of the state where the seed is produced or sold, or (e) if Participant otherwise violates the provisions of this Agreement, this Agreement may be terminated by CCPGA and Participant shall be ineligible to enter into another similar agreement with respect to any cultivar included in the Program for a period of up to but not exceeding five (5) years from the date of discovery of the infraction as determined by CCPGA.

B. Expulsion from membership in Participant's state certification agency or certified seed growers' organization of which Participant is a member shall also constitute an automatic termination of this Agreement by CCPGA. CCPGA intends to solicit agreements from certification agencies and certified seed growers organizations that, to the extent permitted by law, expulsion from a state certification agency or certified seed growers organization may include loss of all membership rights in the agency or organization including all varietal rights, fees and benefits for which Participant was previously eligible or the right to obtain certification from the agency of seed produced by the Participant.

C. If Participant has been found to have committed a violation under the preceding subsection, Participant may be required to post a performance bond in favor of CCPGA or an applicable state certification agency, or both, up to but not exceeding \$10,000 (as determined by CCPGA) conditioned upon future participation in the Program without violation of law, agreements with CCPGA and the Rules and Procedures prior to readmission to the Program or membership in CCPGA or any state certification agency, or both. If Participant is readmitted to the Program pursuant to this subsection, Participant shall be readmitted on a probationary basis for a period of up to but not exceeding three (3) years as determined by the CCPGA during which probationary period the performance bond shall remain in place. If at the end of the probationary period, Participant has fulfilled all requirements of law, agreements with CCPGA and the Rules and Procedures, the bond shall be released. If during the probationary period, Participant shall be found (a) by CCPGA to have violated any provision of law, agreements with CCPGA or the Rules and Procedures, the bond shall then become immediately due and payable to CCPGA, or (b) by any state seed certification agency to have violated any provision of law, the membership requirements of the applicable agency, or any other requirements applicable to the growing and distribution of seed potatoes over the agency has any authority, the bond shall then become immediately due and payable to the agency.

D. CCPGA shall have, and is hereby granted by Participant, the authority to seek an agreement with state certification agencies which entitles CCPGA to instruct the agencies to withhold or revoke certification, to the extent permitted by law, for any cultivars produced by a Participant who has failed to pay any required fees, royalties or other charges to CCPGA with respect to an Included Cultivar or has otherwise failed to comply with law, agreements with CCPGA or the Rules and Procedures. In the absence of such an agreement, CCPGA shall nevertheless have the authority to request or instruct applicable seed certification agencies to withhold or revoke certification of seed of any cultivar produced by Participant if Participant has failed to pay any required fees, royalties or other charges to CCPGA with respect to an Included Cultivar or has otherwise failed to comply with law, agreements with CCPGA or the Rules and Procedures.

E. In addition to the foregoing, Participant acknowledges that a violation of any provision of this Agreement or of the Rules and Procedures as established from time to time by CCPGA may cause CCPGA to be in violation of provisions of its agreements with CSU, other Contract Growers, or other persons, or all of them, which could cause irreparable harm to CCPGA for which there would be no adequate remedy at law. For this reason, Participant agrees CCPGA shall have available to it all equitable remedies, including the right to seek injunctive relief without posting a bond, in the event of a violation by Participant of any provision of this Agreement or the Rules and Procedures. The seeking of equitable relief by CCPGA shall not preclude it from seeking any other remedies which may be available to it at law or otherwise.

F. Participant specifically consents and agrees to each and every provision of the foregoing four subsections A through D subject to the conditions precedent set forth in them. To the extent the foregoing four subsections grant rights, or this Agreement provides obligations, to persons who are not parties to this Agreement, those persons shall be deemed to be third party beneficiaries with respect to those rights and obligations.

21. Arbitration. Except as otherwise provided in this Agreement, if a dispute develops with respect to any provision of this Agreement and the dispute cannot be resolved by the parties, it shall be submitted to binding arbitration by one arbitrator selected from a list of possible arbiters selected by the Board of Directors of CCPGA. The arbitrator shall be entitled to include injunctive relief as part of an arbitration award. Each party shall bear the party's own costs of the arbitration and the cost of the arbitrator will be shared equally by the parties unless, in either case, the arbitrator determines that fairness requires that one party be awarded some or all of his costs associated with the arbitration. The decision of the arbitrator shall be final and binding on both parties. The decision may be entered in a court in Colorado for judgment on it pursuant to the statutes and rules of procedure of the courts in Colorado. Arbitration as provided in this Section shall be a February, 2019

condition precedent to any judicial action with respect to those matters required to be submitted to arbitration under this Agreement. This Section shall not apply to the enforcement of rights of CCPGA under the PVPA which may be sought initially by a judicial proceeding without arbitration, or disputes regarding royalties which are subject to resolution in accordance with subsection 9.f.

22. Notices. All notices or other communications required or permitted under this Agreement shall be given in writing and shall be delivered in person, or by mail in the United States mails, with proper postage affixed, addressed to the intended recipient at the address shown on the signature page of this Agreement or at another address provided by the intended recipient to the other party by notice, except that if a notice or other communication is related to the termination or possible termination of this Agreement or is given in connection with Section 20 above the notice or other communication shall be given by certified or registered mail. Notices or other communications given in person shall be effective upon delivery to the recipient and notices given by mail shall be effective on the third day after the notice was mailed. In addition to the preceding, notice may also be given by facsimile transmission, with transmission verified, to a number provided by the recipient to the other party followed by a notice given by mail in which case the notice shall be effective on the date the facsimile transmission was sent by the party giving notice. Notwithstanding the foregoing, this Section shall not apply to routine communications between the parties conducted in facilitating the routine carrying out of the purposes of this Agreement.

24. Entire Agreement. This Agreement, together with all materials referenced in this Agreement as being applicable to this Agreement, constitute the entire agreement and understanding between the parties and all previous discussions, representations, understandings or agreements are hereby superseded. No affirmation, representation or warranty made in any advertising or promotional information of CCPGA or by any agent, employee or representative of CCPGA which is not specifically included or referenced within this Agreement is part of this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or to explain any term used in this Agreement. This Agreement can be modified only in writing signed by CCPGA and Participant. Each form of Schedule A shall be signed by both parties and failure of Participant to sign a revised Schedule A within thirty (30) days after receipt of it from CCPGA shall constitute a notice to CCPGA that Participant is terminating this Agreement at the end of the thirty (30) day period.

25. Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted, or if a court of competent jurisdiction or arbiter finds that any particular provision, or any part thereof, is invalid or unenforceable as written but would be enforceable as to lesser included portions of the provision or part, the court or arbiter shall not invalidate the entire provision or part but shall rather reform the provision or part and enforce it to the extent that it would be valid and enforceable.

26. Limitations of Actions; Successors. Any action for breach of the Agreement or otherwise related to or arising out of the services performed hereunder or the goods provided pursuant to this Agreement must be commenced within one (1) year after the cause of action has accrued. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and permitted assigns.

27. Choice of Law. Because this Agreement relates to cultivars developed and principally grown in the State of Colorado and because the location of the principal parties, CCPGA and CSU, to the Program are located in the State of Colorado, this Agreement and agreements similar to it shall be governed by and construed under the laws of the State of Colorado, without regard to principles of conflicts of law.

28. Effective Time. This Agreement shall not be valid and binding until it is executed by CCPGA, and the date of its execution by CCPGA shall be its effective date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

PARTICIPANT:

CCPGA: (COLORADO CERTIFIED SEED
POTATO GROWERS' ASSOCIATION)

Type or Print Name of Participant(s)

Signature of Participant or
Participant Representative

CCPGA Manager or President
PO Box 267
Monte Vista, Colorado 81144

Type or Print Name of Participant
Representative (if applicable)

Execution (Effective) Date:

Termination Date:

Type or Print Address

Telephone Number

Email Address

General Location of Site of Production of Included Cultivar(s):

SCHEDULE A

to PARTICIPANT AGREEMENT for POTATOES CULTIVARS between Colorado Certified Potato Growers Association and

Participant

<u>Included Cultivar</u>	<u>PVPA Cert. No.</u>	<u>Participation Fee</u>	<u>Royalty Rate</u>
Silverton Russet			
Keystone Russet			
Colorado Rose			
Mountain Rose			
Purple Majesty			
Rio Grande Russet			
Canela Russet			
Rio Colorado			
Mesa Russet			
Masquerade			
Crestone Russet			
Mercury Russet			
Fortress Russet			
Red Luna			
CO 0327-5RU			
CO 97087-2RU			
CO 98067-7RU			
CO 0277-2RU			
Rocky Mountain Russet			
Vista Gold			

For each Included Cultivar, Participant shall pay to CCPGA:

A Participation Fee which is subject to variation among persons who become Participants at different times and for other reasons; and
A Royalty at a rate established by the Management Committee which is subject to annual review and revision by the Management Committee; All as provided in the Participant Agreement.

Dated: _____

PARTICIPANT:

COLORADO CERTIFIED POTATO GROWERS' ASSOCIATION

By: _____

Title: _____

February, 2019