

# North American Olive Oil Association Seal Licensing Agreement

Given the North American Olive Oil's position as North America's leading authority on the olive oil industry, the association's seal exemplifies the association's long-standing commitment to educate consumers about olive oil and to promote olive oil. Use of the seal is limited to members of the North American Olive Oil Association (NAOOA) and requires acceptance of both the legal and graphic guidelines pertaining to its use.

NAOOA members, including licensees, must consult the style guide included as Exhibit A to this licensing agreement for information on the physical appearance of the seal.

## 1. DEFINITIONS

For purposes of this Licensing Agreement the following terms shall have the following meanings:

- (a) "Effective Date" shall be the date of execution of this Agreement.
- (b) "Licensee" shall mean any NAOOA member and, where applicable, subsidiaries of such members, which has been granted the right to use the NAOOA seal pursuant to the terms of this Licensing Agreement.
- (c) "Mark(s)" shall mean the NAOOA Seal as depicted in the attached Exhibit A.
- (d) "NAOOA Test Procedure" shall mean the applicable testing and compliance requirements as set forth on the NAOOA website and as may be amended by NAOOA from time to time with reasonable notice to the NAOOA's membership.
- (e) "Product" shall mean the olive oil product to which the NAOOA Seal is affixed either directly or indirectly (e.g., by label or on invoice).

## 2. REQUIREMENTS

The NAOOA Seal Program is open to all Regular members of the NAOOA in good standing. By signing this Licensing Agreement, participants agree to follow legal and graphic guidelines outlined herein and in Exhibit A. A new Licensing Agreement must be signed and delivered to the NAOOA by September 30 of each year to allow the participant to continue using the seal in the subsequent calendar year. All members wishing to participate in the NAOOA Seal Program will be required to provide the NAOOA with information detailing their lot code system. Failure to do so will nullify the member company's right to request an appeal of any test in which the results are found to be irregular.

## 3. LICENSE GRANT

(a) Use of the NAOOA Seal is subject to and conditioned by agreement to these terms. The NAOOA logo and seal are protected under United States and International Trademark law, pending approval. Use of these marks, other than in accordance with the terms and conditions of this agreement or as authorized by law, is strictly prohibited, may constitute infringement of NAOOA's proprietary rights and may be actionable under relevant civil and/or criminal laws.

(b) Subject to and expressly conditioned upon compliance with the terms and conditions of this Licensing Agreement, the NAOOA hereby grants to Licensee and any applicable subsidiaries of Licensee a nonexclusive right to use the NAOOA Seal on product sold in the United States, Canada and U.S. military establishments throughout the world solely in the manner described in the NAOOA Seal Style Guide, as may be amended by NAOOA from time to time, and solely in conjunction with the Product that has been submitted to and passed the NAOOA Test Procedure for the specific tested standard. The seal may also be used on private label product provided it can be documented that all product containing the seal is supplied by one or more licensed members. Licensee hereby ensures its subsidiaries' compliance - and the compliance of a company using the seal on its private label product - with the terms and conditions of this License Agreement. When a licensee wants to have a subsidiary or private label customer have use of the seal, it should obtain from the subsidiary or private label customer a signed certification to the effect that the subsidiary or private label customer will comply with the terms of this Licensing Agreement. A copy of this certification should be maintained by the licensee, and a copy should be provided to the NAOOA. Licensee agrees that it shall be jointly and severally liable for any breach of the terms and conditions of this License Agreement by such parties.

(c) The NAOOA represents and warrants that to the best of its knowledge it has the right to enter into this Licensing Agreement, including the right to license the Mark(s). NAOOA further represents and warrants that in its reasonable business judgment it will maintain and enforce the validity and its ownership of the Mark(s). If the NAOOA in its reasonable business judgment declines to take action with regard to a particular instance of suspected infringement or challenge to the

Mark(s), Licensee may pursue such infringement or challenge at its own expense and cost if and only if said challenge is authorized by the NAOOA. In such event, the NAOOA will provide Licensee with all reasonable cooperation, excluding financial costs.

(d) Licensees agree not to revise or alter the seal in any way.

(e) Use of the NAOOA seal does not imply approval or endorsement of products or services.

(f) NAOOA is and remains the sole owner of the NAOOA seal and trademark(s). By entering into this nonexclusive license, the Licensee does not attain any interest in the logo.

(g) NAOOA reserves the right to alter or amend these guidelines from time to time with reasonable notice to the NAOOA's membership.

(h) Licensees agree not to use the NAOOA logo in any manner likely to confuse, mislead or deceive the public and/or the trading community and any relevant governmental entities, or to be adverse to the best interests of the NAOOA.

(i) Licensees agree not to use the logo in any offensive manner, including but not limited to, its use on pornographic and morally or legally offensive websites.

(j) Licensees agree that the NAOOA logo is proprietary to the NAOOA and that the NAOOA maintains all rights, title, and interest thereto including, without limitation, all intellectual property and other proprietary rights.

(k) The license grant made by this Licensing Agreement is non-transferable.

#### **4. ADMINISTRATION FEE**

Licensee will pay an annual administrative fee of \$5,000 for each license, which covers the expenses related to testing the product and administering the program. Each license is brand-specific.

Separate licenses are needed for extra virgin olive oil, as defined by the International Olive Council, and olive oil, as defined by the International Olive Council. The NAOOA Seal is not permitted on olive pomace oil.

The license for companies signing this agreement will expire December 31, 2008. Companies not participating in the NAOOA Seal Program of June 1, 2008 will pay a one-time initiation fee of \$2,500 to be a participant in the NAOOA's Seal Program.

When the effective date falls subsequent to January 1 of a calendar year, the administrative fee minus the collection and inspection fees incurred by the NAOOA will be pro-rated based on the remaining portion of that calendar year. The effective date is the date the agreement is signed by the Licensee.

#### **5. QUALITY, INSPECTION, AND APPROVAL**

(a) Licensee represents and warrants that it will maintain the quality of Product at least at a level that meets current International Olive Oil Council standards and is commensurate with the quality of Product previously distributed by Licensee.

(b) If the NAOOA, in its sole discretion, determines that any use of the Mark(s) fails to conform to this Licensing Agreement, NAOOA shall provide the Licensee with written notice of such failure or deficiency. If the Licensee disputes the allegation of failure of deficiency, it will provide NAOOA with written notice of such claim within 14 days of receiving the NAOOA notice. NAOOA will then have 7 days to provide support for its allegation of failure or deficiency. If NAOOA and Licensee can not reach agreement on the issue within 21 days thereafter, the matter will be submitted to arbitration for a binding decision. Arbitration proceedings will commence as soon as practical and the binding decision of the arbitrator will be put into full force and effect within 14 days from the date of that binding decision. If the Licensee does not dispute the allegation of failure or deficiency, it may be given 60 days from the date of the NAOOA notice to satisfy the NAOOA that the Licensee has fully corrected and remedied any such deficiencies. Should the Licensee fail to cure the deficiencies within said 60-day period, NAOOA may terminate this Licensing Agreement.

(c) Licensee represents and warrants it will comply with all applicable laws, rules, and regulations regarding promotion and sale of Product with any of the Marks, and will not violate or infringe any right of any third party.

(d) (i) Samples will be collected on a random basis by a representative of the NAOOA or an independent third party hired by the NAOOA. Two samples of each product for which the seal will be used will be collected. One will be used for the analysis. The other sample will be stored by the NAOOA until the test results are received. Testing of extra virgin olive oil samples will include organoleptic testing by an IOC-certified panel.

Foodservice samples will be collected by the NAOOA staff and will put the samples into airtight containers that will be marked with a code known only to the NAOOA staff. Bulk samples will be collected by an independent third party and sent to the NAOOA in airtight containers that will subsequently be marked with a code known only to the NAOOA staff.

Samples will be sent on a random basis to laboratories accredited by the International Olive Oil Council. Samples will be tested against the IOOC standard in place at the time of production for the type of product. The results will be sent to the NAOOA. The NAOOA will in turn share the results with the member

on a confidential basis. If product is found to be irregular, the member must immediately cease using the NAOOA logo on all labels and other materials regarding the affected product, including websites.

ii) All types of Product bearing the NAOOA seal must be certified before the seal may be used. The NAOOA will not test a product for a company wishing to use the seal until one year's administration fee for that product has been paid. If there is a problem with the oil and the company no longer wishes to attempt to use the seal, the funds, minus the costs related to the sampling, will be returned. Once a company is in the program, each type of olive oil product will be sampled at least two times per full calendar year the licensee is in the program.

iii) Members have the right to request an appeal test of the affected product if the initial test indicates that the product is irregular. Such appeal tests will be conducted using the second container of the product collected by and stored by the NAOOA. Members will bear all costs related to the appeal tests, including laboratory fees and shipping fees. The NAOOA Seal may continue to be used during the appeal process.

iv) Once a licensee is prohibited from using the NAOOA seal because of failed test results, the company's product bearing the seal and covered by that license must be recalled. The company must provide to the NAOOA a recall plan and must provide further documentation to prove the recall has been completed. The recall must be completed within 30 days of notification from the NAOOA.

v) Once a member is prohibited from using the NAOOA seal because of failed test results, the company's olive oil product that failed the earlier test must again be certified. Re-certification will not be permitted for at least six months after all previous product bearing the seal is removed from distribution.

(e) By signing this agreement, members agree that product bearing the seal after the permitted timeframe or product from un-certified members bearing the seal will result in a fine payable to the NAOOA of \$10,000 per month per license.

## **6. IDENTIFICATION AND USE**

Licensee acknowledges NAOOA's ownership of the Mark(s). Licensee shall employ best efforts to use the Mark(s) in a manner that does not derogate from NAOOA's rights in any of the Mark(s) and will take no action that will interfere with or diminish NAOOA's rights in the Mark(s). Licensee agrees not to adopt, use or register any corporate name, trade name, trademark, domain name, product name, service mark or certification mark or other designation that is textually, graphically or commercially similar to the Mark(s) or

which is likely to cause confusion in the marketplace. Licensee agrees that all use of the Mark(s) by Licensee will inure to the benefit of NAOOA. Licensee may not use the Mark(s) in any way that implies endorsement or sponsorship by NAOOA of Licensee's Product. Licensee agrees to list the NAOOA as an additional insured on its product liability insurance documents.

## **7. DEFENSE OF CLAIMS**

(a) NAOOA will not and does not agree to defend or indemnify Licensee with regard to any claim resulting from Licensee's use of the Mark(s).

(b) NAOOA shall have no liability for any intellectual property infringement claim based on Licensee's manufacture or distribution of Product, or its use of the Mark(s).

(c) NAOOA shall not be liable for any consequential, incidental, indirect, punitive or special damages (Including loss of business profits) arising from or related to Licensee's marketing or distribution of the product, or any use of the Mark(s), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, infringement of intellectual property rights, failure of essential purpose or otherwise. In no event shall NAOOA be liable for any damages for Licensee's use of the Mark(s) in violation of the terms and conditions of this Licensing Agreement. NAOOA makes no warranties, either express, implied, statutory or otherwise, with respect to the Mark(s), including any warranty of non-infringement, implied warranties of merchantability or fitness for a particular purpose.

(d) Licensee agrees to indemnify and defend NAOOA from and against any and all claims, damages, costs, and expenses (including reasonable attorneys' fees) and pay the amount of any adverse final judgment (or settlement to which both parties consent) arising out of or related to the Product in any manner, including user claims regarding Product's defect, failure or malfunction, provided Licensee is notified promptly in writing of any claim, and Licensee has sole control over its defense or settlement.

## **8. INFRINGEMENT**

Licensee shall promptly notify NAOOA in writing of any suspected infringement of or challenge to the Mark(s) or any of its constituent elements.

## **9. TERM OF LICENSE AGREEMENT**

(a) The term of this Licensing Agreement shall be for a period of one (1) year from the Effective Date, except that the initial period shall be from the Effective Date through the end of that calendar year, unless the licensee's product is deemed ineligible to use the seal. In such instances, all use of the seal by the licensee must

stop immediately and no more product bearing the seal may be produced.

(b) Upon expiration of this Licensing Agreement, the license right set forth herein may be renewed for an additional term by execution of a new agreement pursuant to the procedure detailed in Paragraph 2 of this Licensing Agreement or a subsequent version of this Licensing Agreement, as amended or not in NAOOA's discretion. If the Licensee opts to forego renewal, use of the seal must stop immediately upon the expiration of the lease agreement term and no more product bearing the seal may be produced. If product bearing the seal is found by the NAOOA 90 days or more after the licensee's agreement expires, the licensee will have to pay the license fee for that entire calendar year.

### **10. NOTICES**

Any notice given pursuant to this Licensing Agreement must be in writing and must be delivered by either: (i) personal delivery; (ii) certified or registered mail, prepaid, return receipt requested; (iii) deposit with a recognized courier company, prepaid, return receipt requested; or (iv) facsimile or e-mail transmission (with confirmation), in each case to the last address fax number or e-mail address, as the case may be, of which the sending party has received actual or constructive notice. Any such notice will be deemed to be received upon verification of delivery by the NAOOA. Notice to the NAOOA shall be provided to the NAOOA office or such other place as may be designated by NAOOA from time to time. Notice to the Licensee shall be to the last known address of the business office of the Licensee

### **11. ENTIRE LICENSE AGREEMENT; AMENDMENT**

Upon execution by both NAOOA and Licensee, this Licensing Agreement, including all Exhibits, contains the entire agreement of the parties with respect to the subject matter hereof, and shall supersede and merge all prior and contemporaneous communications. It shall not be amended except by a written agreement subsequent to the Effective Date and signed on behalf of the parties by their respective authorized representatives.

### **12. GOVERNING LAW; ATTORNEYS' FEES; EQUITABLE RELIEF**

(a) This Licensing Agreement will be governed by the laws of the State of New Jersey.

(b) With respect to claims or actions arising under this Licensing Agreement, Licensee hereby: (i) submits to the jurisdiction of the State of New Jersey and encompassing such city in its territorial jurisdiction; and

(ii) waives any claim that any such court is an inconvenient forum.

(c) If the NAOOA employs attorneys to enforce or defend any rights arising out of or related to this Licensing Agreement and the NAOOA prevails, then NAOOA shall be entitled to recover from Licensee reasonable attorneys' fees, costs and other expenses.

(d) Licensee acknowledges that a breach by it of this Licensing Agreement may cause NAOOA irreparable damage which cannot be remedied in monetary damages in an action at law and may also constitute infringement of the Mark(s). In the event of any breach that could cause irreparable harm to NAOOA, or cause some impairment or dilution of its reputation or trademarks, NAOOA shall be entitled to an immediate injunction, in addition to any other legal or equitable remedies as defined herein.

### **13. WAIVER**

No waiver by the NAOOA of any breach of this Licensing Agreement will be deemed to constitute a waiver of any subsequent breach of the same or any other provision.

### **14. SEVERABILITY**

If any provision of this Licensing Agreement is declared or found to be illegal, unenforceable or void, then all parties will be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void, it being the intent and agreement of the parties that this Licensing Agreement will be deemed amended by modifying the provision to the minimum extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefore another provision that is legal and enforceable and achieves the same objective.

If the remainder of this Licensing Agreement will not be affected by the declaration or finding and is capable of substantial performance, then each provision not so affected will be enforced to the extent permitted by law.

### **15. RELATIONSHIP**

Neither this Licensing Agreement, nor any terms and conditions contained hereto, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise. The NAOOA is not a guarantor of the quality of the Product.

### **16. SURVIVAL**

The provisions of Sections 3(f), 6, 7, 9, and 12 shall survive expiration or termination of this Licensing Agreement.

**17. EXHIBITS**

This Licensing Agreement includes Exhibit A, which is hereby incorporated by reference. This Licensing Agreement may also include such other Exhibits that may be added to the body of this agreement by NAOOA from time to time.

**18. FURTHER ASSURANCES**

The parties will perform all such further acts, provide such further documents or written assurances, and execute such further documents as are reasonably required or necessary to carry out the acts and transactions contemplated by this Licensing Agreement.

**ON BEHALF OF THE NORTH AMERICAN OLIVE OIL ASSOCIATION:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**19. DISCLAIMER**

NAOOA licenses its logo for use “as is” and makes no warranties, representations or statements, express or implied, with respect to the NAOOA logo. NAOOA will not be responsible for any loss or damages of any kind whatsoever sustained by any party, howsoever caused, as regards to use of the NAOOA logo.

IN WITNESS WHEREOF, the parties hereto have executed this Licensing Agreement as of the Effective Date and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Licensing Agreement duly authorized by all necessary and appropriate corporate action to execute this Licensing Agreement.

**ON BEHALF OF LICENSEE:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Product Covered by License  
(Brand & Type of Oil)