

02-20-2002



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2 SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Y

2.1.08

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document or copy thereof.

1. Name(s) of conveying party(ies):

- 1) PASTEURIZED EGGS, L.P.
- 2)
- 3)
- 4)
- 5)
- 6)

Additional names of conveying parties attached? ☐ Yes ☒ No

2. Name and address of receiving party:

Name: NATIONAL PASTEURIZED EGGS, LLC

Internal Address: _____

Street Address: 13000 S. 83RD CT.

City: PALOS PARK State: ILLINOIS

Zip: 60464

Additional names & addresses attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
- ☐ Security Agreement ☐ Change of Name
- ☒ Other LICENSE AGREEMENT

Execution Dates:

1) DECEMBER 14, 2000

4. Application number(s) or registration number(s):

A. Patent Application No(s).

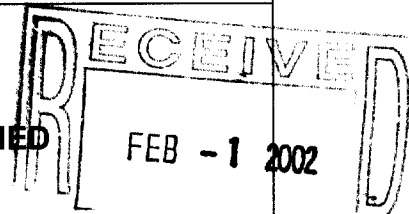
PLEASE SEE ATTACHED

See numbers attached?

B. Patent No(s).

PLEASE SEE ATTACHED

☒ Yes ☐ No



5. Name and address of party to whom correspondence concerning document should be mailed:

Name: DORSEY & WHITNEY LLP

Internal Address: D. WILLIAM TOONE

SUITE 3400

Street Address: 1420 FIFTH AVENUE

City: SEATTLE State: WA ZIP: 98101

6. Total number of applications and patents involved.....

Ten (10)

7. Total Fee (37 CFR 3.41):

\$400

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit account number:

50-1266

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

D. WILLIAM TOONE

Name of Person Signing

Signature

Date

10 Jan 02

Total number of pages including cover sheet, attachments, and document: 17

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PATENT
REEL: 012580 FRAME: 0071

USAN	Filing Date	Patent No.	Issue Date	Attorney Docket No.
07/746,940	August 19, 1991	5,431,939	July 11, 1995	300500.01
08/156,273	November 22, 1993	5,589,211	December 31, 1996	300500.02
08/691,744	August 2, 1996	5,939,118	August 17, 1999	300500.03
08/253,750	June 3, 1994	5,493,994	February 27, 1996	300500.04
08/591,174	January 16, 1996	5,964,182	October 12, 1999	300500.05
08/962,766	November 3, 1997	5,843,505	December 1, 1998	300500.06
09/197,573	November 23, 1998	6,165,538	December 26, 2000	300500.07
09/613,832	July 11, 2000	6,322,833	November 27, 2001	300500.08
09/976,106	October 15, 2001	PENDING	PENDING	300500.09
09/954,462	September 14, 2001	PENDING	PENDING	300500.10

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SULLIVAN & WORCESTER LLP

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~~Amended Draft~~
October 24, 2000LMA
TJDPASTEURIZED EGGS, L.P.
LICENSE AGREEMENT

This License Agreement ("Agreement") is by and between **Pasteurized Eggs, L.P.**, a limited partnership organized and existing under the laws of the State of Delaware ("PE-LP"), and the undersigned (the "Licensee").

WHEREAS, PE-LP owns or controls certain technology related to an in-shell chicken egg pasteurization process (the "PE-LP Technology", as more fully defined herein);

WHEREAS, PE-LP has entered into an agreement with Heat and Control, Inc., a California corporation (the "Manufacturer"), authorizing the Manufacturer to manufacture and sell, under certain terms and conditions, equipment which includes the PE-LP Technology; and

WHEREAS, Licensee has or intends to enter into a purchase agreement with the Manufacturer to purchase equipment manufactured by the Manufacturer which includes the PE-LP Technology and Licensee further desires to engage in the production and sale of Pasteurized Eggs using the Pasteurizer (as such terms are defined herein) and the PE-LP Technology.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. DEFINITIONS.

In addition to the other terms defined herein, as used in this Agreement the following terms shall have the meanings as set forth below:

"Affiliate" shall mean, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of determining whether a Person is an Affiliate, the term "control" shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by virtue of the office held by such Person, by contract or otherwise.

"Change of Control" of a Person shall mean the occurrence of any voluntary or involuntary transaction in which the voting control of a Person (or the entity which controls such Person) is changed from one or more parties to one or more different parties.

- "Egg" or "Eggs" shall mean chicken eggs.
- "Exclusive Territory" shall mean that PE-LP will not sell a Pasteurizer to be located in Illinois, Indiana or Missouri to any Person other than the Licensee for a period commencing with the first Production Date and ending 24 months thereafter (the "Exclusive Period"), unless the Licensee fails to purchase a second Pasteurizer, which has a rated capacity to produce 116 thirty dozen cases of Pasteurized Eggs per hour, during the first 16 months or the License is terminated pursuant to this Agreement. *uma* Exclusive Territory shall not prevent other licensees of PE-LP from selling Pasteurized Eggs in the Exclusive Territory.
- "Facility" shall mean the property and physical plant in which the Pasteurizer is located and operated by Licensee.
- "Licensee" shall mean National Pasteurized Eggs, LLC, a limited liability corporation organized and existing under the laws of IN *uma* and any Person having a direct or indirect interest in National Pasteurized Eggs, LLC or an Affiliate. *L90*
- "License Territory" shall mean the continental United States, unless otherwise provided herein.
- "Pasteurized Eggs" shall mean chicken eggs pasteurized in-shell, *but shall not include hard boiled eggs. ma*
- "Pasteurizer" shall mean equipment manufactured by or under the authority of PE-LP and licensed for use by PE-LP which is either modified or has been manufactured to incorporate PE-LP Technology, including, without limitation, associated equipment through packaging. *L90*
- "PE-LP Marks" shall mean any trade names, trademarks, service marks, trademark registrations and applications, service mark registrations and applications owned or used by PE-LP in the conduct of its business and which are or become used in connection with the PE-LP Technology.
- "PE-LP's Proprietary Information" shall mean confidential and proprietary information that PE-LP does not generally reveal to third parties, including, but not limited to, documentation, devices, manufacturing processes and techniques, formulae, trade secrets, plans, sales, marketing and pricing, know-how, customer lists, either currently existing or hereafter developed. "PE-LP's Proprietary Information" also includes the PE-LP Technology. The foregoing notwithstanding, PE-LP's Proprietary Information shall not include any information that is in the public domain through no act of or omission by Licensee; provided, however, that in the event that Licensee claims

that any such information is in the public domain. Licensee shall bear the burden of proving through pre-existing documentary evidence, that such information is in the public domain and that it entered the public domain through no act of or omission by Licensee.

"PE-LP Technology"

shall mean the technology developed, owned, controlled or licensed by PE-LP, including, but not limited to, (i) PE-LP's own proprietary technology and know-how to pasteurize in-shell Eggs; and (ii) in-shell Egg pasteurization technology that PE-LP acquired or licenses from (a) James P. Cox, *et al.*, (b) L. John Davidson and (c) Louis Polster, including, but not limited to, changes and improvements made to such technology by PE-LP, either directly or through its agents.

"Person"

shall mean an individual, a corporation, a general partnership, a limited partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Production Date"

shall mean the first day Pasteurized Eggs are processed from a Pasteurizer and shipped for sale to a retail, institutional or food services customer or ~~February 1, 2001~~, whichever occurs first.

June 1, 2001

"Right of First Refusal"

shall mean that for a period of three (3) years following the first Production Date, whenever PE-LP received a bona fide offer in writing and has the opportunity to direct the Manufacturer to sell a Pasteurizer to be located in Ohio, Michigan, Wisconsin or Iowa (the "First Refusal States"), Licensee will have the Right of First Refusal to purchase such Pasteurizer at the then applicable price. First Refusal States shall also include Illinois, Indiana and Missouri for the period commencing with the expiration of the Exclusive Period and ending contemporaneous with the Right of First Refusal. PE-LP shall notify Licensee in advance of making any commitment to direct the Manufacturer to sell a Pasteurizer in the First Refusal States, provided, however, PE-LP will not trigger a response from Licensee under the Right of First Refusal before Licensee has shipped an average of 2,500 cases of Pasteurized Eggs for four (4) consecutive weeks. To exercise its Right of First Refusal, Licensee must, within forty-five (45) days after receipt of written notice from PE-LP, place a firm order with the Manufacturer and a deposit with the Manufacturer for a Pasteurizer and pay PE-LP the applicable License Fee. In the event that Licensee fails to place such order and to make such payments within forty-five (45) days, then PE-LP shall be free to sell a Pasteurizer and enter into a License with any third party, all without accounting to Licensee and Licensee shall no longer have the Right of First Refusal with respect to Pasteurizers to be located

in such state.

"Term"

shall mean the term of this License, which shall commence upon the date of this Agreement and, unless sooner terminated, shall terminate at the time that Licensee has ceased to produce Pasteurized Eggs with the Pasteurizer, with the PE-LP Technology and with the PE-LP Marks and a termination notice has been delivered by either party to the other.

2. GRANT OF LICENSE.

2.1 License Grant.

2.1.1 PE-LP hereby grants to Licensee a non-exclusive license (the "License") to use the PE-LP Technology to pasteurize Eggs in-shell in the License Territory and to sell such Pasteurized Eggs to retail, institutional and food service customers on the terms and conditions set forth in this Agreement. PE-LP also hereby grants to Licensee rights to the Exclusive Territory and the Right of First Refusal. The License includes the right to use PE-LP's Marks in connection with the PE-LP Technology in the manner required by PE-LP.

2.1.2 Licensee shall not modify or alter the PE-LP Technology without the prior written consent of PE-LP. If Licensee proposes improvements in the PE-LP Technology in such detail that PE-LP can reasonably determine that such proposals have merit and are practicable, PE-LP will diligently pursue the development of such improvements. PE-LP shall have the right to make modifications, alterations or adaptations of the PE LP Technology in order to integrate PE-LP Technology into existing or future equipment that comprises the Pasteurizer. Any such modifications, alterations, adaptations and derivative works performed by PE-LP shall be deemed to be PE-LP Technology and shall be subject to the terms of this Agreement and the License. In consideration of the License, and for the right to use the PE-LP Technology and the Pasteurizer, Licensee shall pay to PE-LP the License Fee and the Royalty (as such terms are defined herein) as set forth in Article 3.

2.1.3 No license or right is granted by implication or otherwise with respect to any PE-LP Technology or to PE-LP's Marks, except as specifically set forth in this Agreement.

2.1.4 This License shall be non-exclusive and geographically limited to the production and sale of Pasteurized Eggs only in the License Territory.

3. LICENSE FEE; ROYALTY; PAYMENTS.

3.1 At the time that Licensee enters into a purchase order with a non-refundable deposit with the Manufacturer for the purchase of a Pasteurizer, Licensee shall be required to pay to PE-LP a one-time, non-refundable fee (the "License Fee"). The amount of the License Fee shall depend upon the Pasteurizer for which Licensee submits its purchase order to the Manufacturer. The following License Fees are currently in effect:

3.1.1 License Fee for a purchase order for a Pasteurizer designed with a rated

capacity to produce 58 thirty dozen cases of Pasteurized Eggs per hour:
Seventy-Five Thousand Dollars (\$75,000);

3.1.2 License Fee for a purchase order for a Pasteurizer designed with a rated capacity to produce 116 thirty dozen cases of Pasteurized Eggs per hour: One Hundred Thousand Dollars (\$100,000); and

3.1.3 License Fee for a purchase order for a Pasteurizer designed with a rated capacity to produce 170 thirty dozen cases of Pasteurized Eggs per hour: Two Hundred Thousand Dollars (\$200,000).

3.2 Following commencement of production of Pasteurized Eggs on the Pasteurizer, Licensee shall pay to PE-LP for each dozen of Pasteurized Eggs produced (net of rejected Pasteurized Eggs as a result of the pasteurization process and net of returns), a royalty of ten cents (\$0.10) (subject to adjustment as set forth herein, the "Royalty"). Upon a minimum of thirty-five (35) days' prior written notice to Licensee (or a shorter period if it is determined that it is reasonable and in accordance with industry practice), PE-LP may unilaterally change the amount of the Royalty for all future sales periods, but PE-LP will not change the amount of the Royalty with respect to Licensee unless all licensees in the First Refusal States have the same change. Licensee will compute the Royalty weekly as of the last day of each week. Within twenty-eight (28) days following the end of each week, Licensee shall pay to the PE-LP the Royalty due based upon sales made in that week.

3.3 Unless otherwise instructed, all payments to PE-LP hereunder shall be by wire transfer to the following account:

Pasteurized Eggs, L.P.
1921 Parade Road
Laconia, NH 03246

Fleet Bank
400 South Main St.
Laconia, NH 03246
ABA# 011400495
Account No. 9407539X34

3.4 Notwithstanding anything to the contrary contained herein, all Royalty and other payments due from Licensee to PE-LP shall be made without any deduction or set-off for any reason, including, without limitation, for any claim against PE-LP or Licensee for infringement of patent or any other third party claim.

4. Covenants of Licensee

4.1 During the Term (defined herein) of this Agreement, Licensee shall:

4.1.1 not sell, lease, license or otherwise transfer or authorize the transfer of the

Pasteurizer or any other equipment which contains PE-LP Technology or grant any license of PE-LP Technology to third parties;

4.1.2 keep accurate and complete books and records on the PE-LP Technology and on Eggs pasteurized with PE-LP Technology. PE-LP shall have the right to review, at any time and from time to time, such relevant books and records of Licensee as may be required for PE-LP to determine the amount and the basis of calculation of the Royalty therefore due and payable, or paid. PE-LP's right to review such books and records shall only be with respect to those books and records (or portions thereof) which deal with use and implementation of the Pasteurizer or other PE-LP Technology;

4.1.3 take such steps as it reasonably deems necessary or appropriate, and take such steps as PE-LP deems necessary, to record, provide reports on, monitor and/or meter the production of Pasteurized Eggs in order to accurately calculate the Royalty due to PE-LP, and shall accurately report the results of the same to PE-LP;

4.1.4 limit all costs of operations to reasonable costs, and shall aid and cooperate in every reasonable way to reduce the cost of operations, and to make the operation of producing Pasteurized Eggs more efficient, including without limitation following the operating protocols established, from time to time, by PE-LP. Moreover, if PE-LP devises equipment or procedures to make the Egg pasteurization process more efficient or effective, by automating parts of the Pasteurizer or otherwise, Licensee will retrofit the Pasteurizer at Licensee's cost;

4.1.5 take such steps as it reasonably deems necessary or appropriate, and take such steps as PE-LP deems necessary, at its expense to comply with PE-LP quality control standards and the Pasteurized Eggs processing protocols that may be issued from time to time by PE-LP, to satisfy requirements imposed by FDA/USDA or other departments or agencies of the United States government, and to document compliance with HACCP as well as compliance with quality control requirements of food service, institutional and retail accounts;

4.1.6 allow PE-LP access to the Facility at any time, and from time to time, in order for PE-LP to determine whether the quality control standards and other protocols established by PE-LP are being conformed to and complied with by Licensee;

4.1.7 allow PE-LP to demonstrate the operation of Licensee's Pasteurizer to third parties, which may include other egg producers, business associates, regulatory agencies from any government, investment bankers, and other interested parties in the discretion of PE-LP.

4.1.8 not directly or indirectly use the Pasteurizer or PE-LP's Proprietary Information to produce Pasteurized Eggs for private label;

4.1.9 will make available to all retail and food service customers a minimum of three sizes of Pasteurized Eggs, to include medium, large and extra-large; and

4.1.10 service such retail and/or food service customers in the Exclusive Territory and First Refusal States as PE-LP may reasonably direct.

6.2.2 Failure to perform or comply with any term or condition of this Agreement;

6.2.3 Any sale or transfer or attempted sale or transfer of (i) any Licensee's rights under this Agreement, (ii) any PE-LP Technology or (iii) a Pasteurizer without the prior written consent of PE-LP;


6.2.4 Any abandonment or discontinuance of the production of Pasteurized Eggs using the Pasteurizer and PE-LP Technology for reasons that are within the reasonable control of Licensee.

6.3 Upon any termination of this License, Licensee shall immediately cease to use the Pasteurizer and any and all PE-LP Technology.

6.4 Upon any termination of this License by PE-LP, PE-LP shall have the right, but not the obligation, to purchase the Pasteurizer from Licensee for an amount equal to one-half the depreciated cost of the Pasteurizer that was paid by Licensee. The foregoing notwithstanding, in the event that the Pasteurizer is not in as good a condition (normal wear and tear excepted) as when delivered and installed at the Facility, a further appropriate adjustment shall be made to any amount paid to Licensee by PE-LP for the Pasteurizer to account for such further diminished value of the Pasteurizer. PE-LP shall have the right to deduct from any such amount to be paid to Licensee to acquire the Pasteurizer any and all amounts that may be due from Licensee to PE-LP, including, without limitation, the Licensee Fee and Royalties. PE-LP may, in its sole discretion, pay to Licensee the net amount due to Licensee for the Pasteurizer within ninety (90) days following final termination of the License.

7. NON-COMPETITION

7.1 During the Term, and for a period of three (3) years following termination of the License, irrespective of the cause of termination:

md 7.1.1 Licensee shall not directly or indirectly engage in the business of the production ~~and/or the distribution~~ of Pasteurized Eggs anywhere in the world, except Bryan Boomsma, a minority shareholder in Licensee, may distribute Pasteurized Eggs after termination of the License; and 

7.1.2 Licensee shall not directly or indirectly have any interest in any other business that is engaged in the production and/or distribution of Pasteurized Eggs anywhere in the world.

7.2 The restrictions against competition set forth in Section 7.1 are considered by the parties to be reasonable for the purposes of protecting the business of PE-LP.

8. ASSIGNMENT OF LICENSE

8.1 Licensee shall not assign, transfer or sublicense any of its rights under this

Agreement or the license to any third party without the prior written consent of PE-LP. A Change of Control of Licensee shall be deemed to be an assignment. Any purported assignment effected without the written consent of PE-LP shall, at the election of PE-LP, terminate the License; provided, however, that PE-LP shall not unreasonably withhold its consent to an assignment where: (i) all monetary obligations of Licensee to PE-LP are current; (ii) Licensee delivers a general release of liability to PE-LP in a form satisfactory to PE-LP; (iii) the Licensee's assignee assumes all obligations of Licensee under this Agreement, (iv) the assignee meets reasonable managerial and business standards, and is of good moral character and adequate financial resources, all in the reasonable judgment of PE-LP, and (v) Licensee pays a transfer fee to PE-LP in an amount of one hundred thousand dollars (\$100,000). There shall be no consent required for the assignment or transfer of this Agreement to an Affiliate of Licensee, provided that (x) PE-LP is notified of such assignment by Licensee and (y) Licensee remains jointly and severally liable for the performance of the obligations of such assignee.

9. EFFECT OF INSOLVENCY OR TRANSFER BY PE-LP.

9.1 If, during the Term, PE-LP files a petition for adjudication as a bankrupt, for reorganization or for an arrangement under any bankruptcy or insolvency law, or if any involuntary petition under such law is filed against PE-LP and is not dismissed within seventy-five (75) days thereafter, then, so long as any such event is continuing, Licensee may continue to enjoy its License and rights under this Agreement provided that Licensee continues to comply with the terms hereof.

9.2 PE-LP may transfer or assign its rights and obligations under this Agreement to any third party, provided that its monetary obligations to Licensee, if any, are current or are made current at the time of such transfer or assignment. Unless Licensee has been notified in writing by PE-LP of a default under Section 6 of this Agreement, the License shall continue after the transfer or assignment of PE-LP rights and obligations.

10. TITLE TO PATENTS, PROPRIETARY INFORMATION AND TRADE SECRETS/CONFIDENTIALITY.

10.1 Subject to the terms of this Agreement, PE-LP shall retain all of its ownership and license interests, as the case may be, in and to all PE-LP Technology.

10.2 Subject to the terms of this Agreement, title to PE-LP's Proprietary Information shall at all times remain the property of and vested with PE-LP or the third parties which furnish such materials. Licensee shall use PE-LP's Proprietary Information only in connection with the exercise of its rights and performance of its obligations under this Agreement. Licensee shall not disclose PE-LP's Proprietary Information to third parties other than those who have a "need to know", in which latter event the identity(ies) of such "need to know" parties shall first be revealed to PE-LP in writing and then such third parties shall execute a confidentiality and non-use agreement running in favor of, and satisfactory to, PE-LP in advance of such disclosure(s). Upon the earlier of (i) any termination of the License or (ii) the request of PE-LP, Licensee and all individuals whose services are engaged by Licensee shall promptly return to PE-LP or its designees all of PE-LP's Proprietary Information and any and all related materials, including all copies thereof.

11. **WARRANTIES AND REPRESENTATIONS.** In addition to the other warranties, representations and covenants set forth in this Agreement:

11.1 Each party warrants and represents to the other that it has full right, power and authority to enter into this Agreement and to perform all its obligations hereunder and that the execution, delivery and performance of this Agreement will not violate the provisions of any other agreement to which it is a party.

11.2 PE-LP warrants and represents that (i) there are and will be no encumbrances or restrictions on the PE-LP Technology, nor will the use thereof, as contemplated herein, be inconsistent with the rights granted to Licensee in this License, and (ii) to the best of PE-LP's knowledge, the PE-LP Technology and the rights granted in this License do not and will not violate or infringe upon any patent or other rights of third persons. The foregoing notwithstanding, the License granted to Licensee pursuant to this Agreement is non-exclusive.

11.3 PE-LP warrants and represents that the PE-LP Technology shall comply with all applicable laws, rules and regulations, including, but not limited to, the standards that may be finally adopted (after the appeal process has been completed) from time to time by the United States Food and Drug Administration or by the United States Department of Agriculture.

11.4 Each party warrants and represents that it will conduct its activities in connection with this Agreement in accordance with all applicable laws, statutes, ordinances, rules, regulations, orders and bylaws.

11.5 Licensee warrants and represents that it shall not disclose PE-LP Proprietary Information to third parties except in accordance with this Agreement, nor contest, directly or indirectly, PE-LP's ownership, right, title or interest in PE-LP Technology.

12. **INDEMNIFICATION.**

12.1 Each party will at all times indemnify, defend and hold harmless the other party from and against any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees, arising out of any breach of a representation or warranty made by such party or out of the breach of any obligation by a party under this Agreement. Prompt written notice of any claim or litigation hereunder must be given either party, as the case may be, by the other party in order for said indemnity to apply. The indemnifying party shall have the right to control the defense of the claim at its expense. At its own cost and expense, the indemnified party shall have the right, but not the obligation, to participate in the defense of any claim; provided, however, that the indemnified party shall reasonably cooperate with the indemnitor in the defense of any claim. There will be no settlement of any claim to which an indemnity relates without the prior written consent of the indemnitor, which consent shall not be unreasonably withheld or delayed.

13. **ARBITRATION; REMEDIES.**

13.1 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Boston, Massachusetts, in accordance with the

Commercial Arbitration Rules of the American Arbitration Association and the provisions in this Article 13, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

13.2 With regard to the interpretation of this Agreement on matters of dispute between PE-LP and Licensee, the parties agree to have all questions related thereto, including the award of compensatory or punitive damages, or both, submitted to and resolved by binding arbitration by a panel of three (3) arbitrators as follows:

13.2.1 Each arbitrator must be completely independent and free from any prior dealings with either party, including their affiliates and/or agents including their attorneys and of any disputed products and processes involved in the arbitration. Each party shall select one arbitrator, and the two arbitrators so selected shall select the third. The arbitrators so selected shall be from a list of persons qualified as arbitrators in patent and technology licensing matters to be provided by the American Arbitration Association. If no list of qualified persons exists from the American Arbitration Association, then the parties may each select the arbitrators from other sources.

13.2.2 The arbitrators shall have jurisdiction to resolve all disagreements on the interpretation of all provisions under this Agreement. Notwithstanding the foregoing, the arbitrators shall not have the authority to modify any express provision(s) of this Agreement. Upon such a disagreement arising, each party shall submit a statement identifying the points in dispute in reference to the Agreement, together with all written documentation in support thereof which they deem appropriate. The arbitration panel shall convene to receive such further written and oral presentations from each party as they may deem appropriate. The arbitrators shall then render a written decision addressing its findings of fact and conclusions on each of the issues submitted. The joint decision of two of the three arbitrators shall be binding on the parties.

13.2.3 The arbitration proceedings shall not require undue formality, and the rules of evidence of a jurisdiction, although providing guidance, shall not be controlling on the admission of material that may be considered by the arbitration panel and the panel shall be permitted to weigh the credibility and reliability of all material submitted in rendering its decision.

13.3 Each party shall initially bear its own costs of arbitration, including, without limitation, any fees assessed by the arbitrator designated by such party, travel costs, reasonable attorneys' fees and other costs; provided, however, that the arbitrators shall award the prevailing party in the arbitration all such amounts expended on arbitration in accordance with this Article 13.

13.4 In the event that a third party brings an action against either party and there is a dispute between PE-LP and Licensee as to which party is responsible for defending such third party action, then, until such dispute is resolved, PE-LP and Licensee shall reasonably cooperate so as not to jeopardize the defense against such third party action.

13.5 The License and other rights granted to Licensee by PE-LP and the PE-LP Technology that is disclosed by PE-LP to Licensee has a value which may not be readily measured in monetary terms. Any breach or threatened breach of this Agreement or License by

Licensee would cause PE-LP to suffer irreparable harm and damage. Therefore, notwithstanding the obligation to submit all disputes to arbitration, in the event of any breach or threatened breach by Licensee of any provision of this Agreement, PE-LP shall be entitled to both legal and equitable relief, including, without limitation, temporary, preliminary and permanent injunctive relief, to restrain a breach and to mandate compliance with the terms set forth herein. In the event of any breach of this Agreement by PE-LP, Licensee shall only be entitled to seek monetary damages and shall not be entitled to seek injunctive or other relief.

13.6 In the event of any enforcement proceedings under this Agreement, whether in pursuit of legal or equitable remedies, and whether in arbitration or in a judicial forum, the prevailing party shall be entitled to reasonable attorney's fees and other costs arising out of the dispute, such costs to be paid forthwith by the non-prevailing party upon determination of the matter.

14. SPECIAL PE-LP OPERATIONAL OVERSIGHT PREROGATIVES

14.1 Licensee shall not advertise, select packaging, distribute marketing or sales literature or conduct any other public communication concerning the Pasteurized Eggs until and unless the communications, packages, images, or other advertising has been approved by PE-LP, which approval shall not be unreasonably denied or delayed.

14.2 PE-LP shall have the right at any time without notice to Licensee to inspect Licensee's plant or any other facilities under the control of Licensee where the Pasteurizer is located and/or where any Eggs or Pasteurized Eggs or packaging to be used by Licensee are stored, shipped from or to, or used, all to ensure that quality assurance standards are observed by Licensee. PE-LP may impose programs upon Licensee to insure the compliance with such standards. In exercising such inspection rights, PE-LP shall reasonably cooperate with Licensee to avoid disrupting the operations of Licensee.

15. NOTICES.

15.1 All notices to a party shall be in writing and shall be addressed to such party at the address indicated below. Notice shall be sufficient when delivered by hand; when sent by telecopy with the original thereof posted first-class mail, postage prepaid, within two (2) business days thereafter; when posted certified mail, postage prepaid, return receipt requested; or when delivered by a reputable, internationally recognized private courier, requesting evidence of receipt as part of its service. Any such notice shall be addressed to the party at its telecopy number or its address described below, and shall be effective upon the earlier of when first received or within three (3) business days of being dispatched. Unless otherwise notified in writing, each party shall direct all sums payable to the other party at its address for notice purposes. For purposes hereof, the addresses of the parties shall be as follows:

All notices to PE-LP shall be addressed to PE-LP at:

Pasteurized Eggs, L.P.
South Down Shores
1921 Parade Road
Laconia, NH 03246-1517
Attention: Mr. L. John Davidson, Chairman
fax (603) 524-5235

or to such other place as may be designated by PE-LP by giving notice in accordance with this Agreement.

All notices to Licensee shall be sent to the address appearing on the signature page of this Agreement or to such other place as Licensee may designate by giving notice in accordance with this Agreement.

16. MISCELLANEOUS.

16.1 Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by each of the parties hereto.

16.2 All of the terms and conditions set forth in this Agreement shall be binding upon each of the parties, its officers, directors, employees, agents, representatives, successors, and all others acting under its direction or control or in concert with it, or under its authority, whether express or implied.

16.3 This Agreement shall in all respects be construed, enforced, and given effect according to the law of The Commonwealth of Massachusetts and the copyright, patent and trademark laws of the United States of America, without regard to conflict of laws principles which would require the application of the laws of another jurisdiction. Each party hereby consents to the personal jurisdiction of the courts located within The Commonwealth of Massachusetts.

16.4 No waiver or modification of any right or obligation arising under this Agreement shall be construed as a waiver or modification of any other right or obligation. No waiver of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other term or condition hereof.

16.5 Neither party shall be responsible for any resulting loss if the fulfillment of any of the terms or provisions of this Agreement is delayed or prevented by riots, wars, acts of enemies, national emergency, strikes, floods, fires, acts of God, or by any other cause not within the control of the party whose performance is interfered with and which, with the exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes enumerated above or not.

16.6 Licensee and PE-LP are each independent contractors with a relationship of licensor and licensee. Nothing herein contained shall be construed to place Licensee and PE-LP

in the relationship of principal and agent, master and servant, partners, joint venturers, or employer and employee, and, except as otherwise set forth in this Agreement, neither party shall have, expressly or by implication, the power to represent themselves as having any authority to make contracts in the name of or binding on the other, or to obligate or bind the other in any manner whatsoever.

16.7 If any provision of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, then such provision or provisions shall not invalidate or in any way affect the enforceability of the remainder of this Agreement and such provision or provisions shall be curtailed and limited to the extent necessary to bring the Agreement within any applicable legal requirement within the jurisdiction of such court.

16.8 The headings of the sections and other subdivisions of this Agreement are for convenient reference only. They shall not be used in any way to govern, limit, modify, construe this Agreement or any part or provision thereof nor otherwise be given any legal effect.

16.9 This Agreement may be executed in counterparts. Each counterpart, including a signature page executed by each of the parties hereto, shall be an original counterpart of this Agreement, but all of such counterparts together shall constitute one instrument.

16.10 Each party agrees to provide any and all additional documents reasonably requested by the other party in order to carry out the purpose of this Agreement.

16.11 This Agreement contains the full and complete undertaking and agreement between PE-LP and Licensee with respect to the within subject matter, and supersedes all other agreements between PE-LP and Licensee, whether written or oral (except any confidentiality agreements between the parties, which shall, to the extent such agreements do not contradict the terms of this Agreement, continue in effect), and may not be modified or amended except by written instrument executed by both PE-LP and Licensee contemporaneously herewith or after the date of this Agreement with specific reference to this Agreement.

(REMAINDER OF PAGE INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have set their hands to this Agreement as
a sealed instrument and have delivered this Agreement as of the 14th day of Dec, 2000 ✓

PASTEURIZED EGGS, L.P.,

By Its General Partner, The Davidson
Group Shell Egg Corporation

By: [Signature]

L. John Davidson

Its: Chairman and Chief Executive Officer

Licensee:

NATIONAL PASTEURIZED EGGS, LLC,

a INDIANA limited liability company ✓ ma

By: [Signature]

[Signature], its member and
duly authorized

Notice Address of Licensee:

National Pasteurized Eggs, LLC

1700 S. 83RD ST
PALESTINE, IL. 60464 ✓ ma

Attn: MARTIN AARDEMA

Fax # 708-674-1066

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