

## REVISED PONO COCOA NON-EXCLUSIVE LICENSE AGREEMENT

This license agreement (the “Agreement”) is between PONO COCOA, and the Licensee, designated below in the signature block (“Licensee”), and is effective as of the Effective Date (defined below).

- A. PONO COCOA (PC) defines CACAO FARMERS as “Small and Independent Cacao Farmers” if they meet specific criteria set by PC and provided at [www.PonoCocoa.org](http://www.PonoCocoa.org), referred to as the “Criteria”.
- B. PC defines CRAFT CHOCOLATE MAKERS as “Small and Independent Craft Chocolate Makers” if they meet specific criteria set by PC and provided at [www.PonoCocoa.org](http://www.PonoCocoa.org), referred to as the “Criteria”.
- C. CACAO FARMERS and/or CRAFT CHOCOLATE MAKERS may submit a request indicating that they meet the Criteria to become eligible to use the Seal.
- D. PC owns all right, title and interest in and to the PC CERTIFICATION and SEAL and all associated names and logos (together, the “Licensed Marks”).
- E. PC desires to grant limited, non-exclusive licenses to certain farmers, co-ops and independent craft chocolate makers (including Licensee) to use the Licensed Marks solely in connection with the advertising, marketing, and sales of cacao and chocolate products (as defined by the PC Criterias) made at festivals or events that meet the Criteria (the “Products”). For clarity, cacao and chocolate products marketed or sold under a brand name not owned (either directly or through an affiliate within the farm or makery’s controlled group as defined by the PC bylaws) by a qualifying, 100% ethical cacao farms and/or independent craft chocolate maker DO NOT QUALIFY as Products under this Agreement and may not bear the Licensed Marks, regardless of whether the producing maker would otherwise meet the Criteria. For example, private label bars sold under a brand name owned by a retailer, or cacao sold under brand name owned by a non-independent celebrity chef or cocoa farming where living wage is unavailable to workers , DO NOT QUALIFY as Products and may not bear the Licensed Marks on their label.

In consideration of the terms and conditions set forth in this Agreement, PC and Licensee hereby agree as follows:

1. EFFECTIVE DATE. This Agreement is entered into and executed upon PC’s approval of eligibility via email or other web-based communication (the “Effective Date”).
2. GRANT OF LICENSE. PC grants to Licensee a limited, non-transferable, non-assignable, and non-exclusive worldwide right and license to use the Licensed Marks on product labels, product packaging and print and electronic media solely in connection with Licensee’s Products, including the advertising, promotion, and sale of Products (and related merchandising), during the Term (defined below in Section 3).

a. **RIGHT TO SUBLICENSE.** Licensee has a limited right to grant a sublicense to use the Licensed Marks only to third parties with which Licensee has contracted to advertise, promote or market the Products (“Approved Sublicensees”). Licensee agrees that it will require all Approved Sublicensees to agree in writing to all terms and conditions necessary and appropriate to protect PC’s right, title and interest to the Licensed Marks, which will include, but not be limited to, all applicable terms and conditions of this Agreement and will also provide that PC will be a third party beneficiary of each such sublicense.

b. **RESERVATION OF RIGHTS.** PC reserves all other rights in and to the Licensed Marks.

3. **TERM OF LICENSE.** The initial term of this Agreement is one (1) year, and it will automatically be extended for successive one (1) year renewal terms, unless terminated earlier by PC.

4. **OWNERSHIP OF LICENSED MARKS.** Licensee agrees that PC owns the exclusive right, title and interest in and to the Licensed Marks, agrees that it will not represent in any manner that it has any ownership in the Licensed Marks, and acknowledges that all uses and resulting goodwill, including any additional goodwill that may develop because of Licensee’s use of the Licensed Marks, will inure to the benefit of PC. Licensee has no right to modify or change the Licensed Marks without the prior written consent of PC. Licensee agrees that its use of the Licensed Marks will comply with all applicable laws, rules and regulations. Licensee will not at any time challenge or impair PC’s rights in the Licensed Marks. Licensee will uphold PC’s good name, preserve PC’s reputation, and protect PC’s rights in the Licensed Marks during the Term. During and after the Term, Licensee agrees and warrants that it will not infringe or cause the infringement of any marks similar to the Licensed Marks.

#### 5. DUTIES OF LICENSEE

a. **COMPLIANCE WITH STANDARDS.** Licensee agrees to comply with the Criteria and any other standards set by PC (including but not limited to the standard’s published on [www.ponococoa.org](http://www.ponococoa.org)) (together, the “Standards”) and incorporated herein by reference, and with any changes or modifications thereto. PC will provide Licensee with prior written notice of any such changes or modifications. Licensee will have six (6) months after receiving notice of any such changes or modifications to comply with the changes. Licensee agrees to immediately correct any use of the Licensed Marks that PC regards as failing to comply with the terms of this Agreement or the Standards; all such corrections will be at Licensee’s sole cost and expense.

b. **QUALITY CONTROL.** All use of the Licensed Marks will be in keeping with the reputation of the PC and will comply with the Standards, and any other quality standards set by PC from time to time. Licensee agrees to provide representative samples of its use of the Licensed Mark to PC upon PC’s reasonable request. c. **NOTICE OF INFRINGEMENT.** Licensee will promptly notify PC of any unauthorized use, infringement, or dilution of the Licensed Marks. Licensee will cooperate with PC and take any action necessary to prevent

the unauthorized use, infringement or dilution of the Licensed Marks. PC will have the sole right to take (or determine not to take) any action it deems appropriate with respect to any unauthorized use, infringement or dilution of the Licensed Marks.

## 6. TERMINATION.

a. **TERMINATION WITHOUT NOTICE.** PC may terminate this Agreement immediately without notice to Licensee:

- i. if Licensee no longer qualifies as a Small and Independent Craft Chocolate Maker or 100% Ethical Cacao Farmer under the Criteria,
- ii. if Licensee makes an assignment of assets or business for the benefit of creditors,
- iii. if a trustee or a receiver is appointed to administer or conduct Licensee's business or affairs,
- iv. if Licensee is adjudged as bankrupt,
- v. if Licensee assigns or sublicenses this Agreement without the express consent of PC,
- vi. if Licensee's use of the Licensed Marks materially impairs the reputation and goodwill of PC, as solely determined by PC, or
- vii. if Licensee challenges the validity of the Licensed Marks or PC's ownership of the Licensed Marks.

Upon termination under this Section 6(a), all rights granted herein will cease and terminate without prior notice or legal action. Licensee acknowledges that its rights to continue use of the Licensed Marks may be terminated if it engages in any unauthorized use of or references to the Licensed Marks and that PC will be irreparably injured by any such unauthorized use of the Licensed Marks.

b. **TERMINATION WITH NOTICE.** PC may terminate this Agreement upon thirty (30) days written notice to Licensee if Licensee fails to comply with the terms and conditions of this Agreement, including failure to comply with the Standards and any changes or modifications thereof.

c. **DUTIES UPON TERMINATION.** Upon termination of this Agreement, Licensee will immediately destroy and withdraw any advertising and promotional materials, product labels, product packaging and any other materials bearing the Licensed Marks, and Licensee will immediately cease and desist from all further use of the same, including any use of any imitation, likeness or variation of the Licensed Marks.

7. **PC WARRANTIES.** PC warrants and represents that: (i) it is free to enter into this Agreement; (ii) to its knowledge, PC is the owner of all right and title in and to the Licensed Marks, and (iii) to its knowledge, use of the Licensed Marks as provided herein will not infringe the trademark, service mark, certification mark, copyright or other proprietary rights of any person, provided that PC does not represent or warrant that the Licensed Marks are available for registration and/or use in any specific country where PC has not registered or used it. **TO THE EXTENT PERMITTED BY LAW, PC DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED RELATIVE TO THE LICENSED MARKS, INCLUDING WITHOUT LIMITATION ANY FURTHER WARRANTY OF TITLE OR NONINFRINGEMENT.**

8. **INDEMNITY.** Licensee agrees to defend, indemnify and hold PC and its respective representatives, employees, officers, directors and agents harmless against all claims, suits, costs, damages, judgments, attorney fees, settlements or expenses incurred caused by, arising from or relating to any breach of this Agreement by Licensee or otherwise arising out of or relating to Licensee's use of the Licensed Marks.

9. **AMENDMENT/ENTIRE AGREEMENT.** This Agreement may be amended or supplemented by PC upon written notice to Licensee. This Agreement will be binding upon and inure to the benefit of the PC and its successors and assigns. Licensee may not assign this Agreement without PC's prior written consent. This Agreement, including the referenced Standards, as amended or modified, constitutes the entire agreement between the parties and supersedes all earlier agreements.

10. **WAIVER.** No term or provision will be considered waived, and no breach excused, regardless of conduct, unless such waiver or consent is in writing. No such consent or waiver will constitute a consent, waiver, or excuse of any other, different, or subsequent breach.

11. **NOTICE.** Any notice, demand or other communication required or permitted to be given under this Agreement will be in writing and addressed to their addressee at their address stated hereunder or such addresses as the parties may specify from time to time by written notice. Notice may be delivered by hand, by confirmed email, or by registered mail, return receipt requested. Such notice will be treated as received upon the earlier of actual receipt or five (5) days after posting.

12. **RELATIONSHIP OF THE PARTIES.** PC and Licensee are independent contractors. Nothing contained in this Agreement constitutes a partnership or joint venture between the parties or creates any agency relationship for any purpose.

13. **COUNTERPARTS.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document.

14. **FURTHER ASSURANCES.** The parties agree to execute any other documents and do any other acts to carry out the purposes and intent of this Agreement.

15. GOVERNING LAW. This Agreement will be governed by the laws of the State of Hawai'i. Exclusive venue and jurisdiction for any dispute arising out of or concerning this Agreement is in the Boulder District Court and in the U.S. District Court for the District of Hawai'i, as appropriate.

16. AUTHORITY OF LICENSEE REPRESENTATIVE OR AGENT. Licensee warrants that the person signing this Agreement has the authority to bind Licensee in all respects for its performance under the Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date and have caused this Agreement to be executed by their duly authorized officers.

PC / LICENSOR PONO COCOA.

Name: Ethan Swift

Title: Pono Cocoa Director

Date: December 21, 2020

Address: PO Box 1795, Hilo, HI 96721 USA

Telephone: +1.808.756.6076

Email: info@ponococoa.org

LICENSEE (S) By:

Name:

Title:

Date:

Address:

Telephone:

Email: