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3. Territory – Territory is defined as United States of American and Canada only
4. Plant Tags: Licensee Must Use 'Proven Winners® ColorChoice®' Plant Tags With Finished Plants and May NOT Use Any Other Plant Tags -- Licensor provides to Licensee one variety-specific Proven Winners® ColorChoice® plant tag for each individual Licensed Product purchased by Licensee. Licensee shall not grow, sell, distribute, or ship any Finished Plant of any Licensed Product using any plant tags not provided by Licensor, or use any other trademarks, names, variety names or markings with Licensed Product except as allowed in paragraph #5 below. Further, Licensee is strictly prohibited from creating, printing, or producing plant tags, containers, pots or any type of packaging labels containing, reproducing, or displaying Proven Winners® ColorChoice® variety names and trademarks, images, or cultural information. Plant tags are supplied and must be used with all plant sales. Licensor shall use a Proven Winners® ColorChoice® tree wrap for trees shipped to retail.
5. Limited Right to Use Bar Code -- If Licensee wishes to utilize a bar code, Licensee may include along with such Finished Plants a white plant tag consisting only of a bar code and/or a retail price, with no other markings whatsoever, except as allowed in paragraph #5.
6. Limited Right to Use Licensee Name -- If Licensee wishes to indicate that Licensee is the grower of the Finished Plant of the Licensed Product; Licensee may apply a label that reads “Grown under license from Proven Winners® ColorChoice® by [Name of Licensee].” Such label shall consist only of the aforementioned plain text with no designs or embellishments (except Licensee may combine the aforementioned plain text with a bar code and/or retail pricing mentioned above on one sticker/label).
7. Licensee Is Strictly Prohibited From Using Proven Winners® ColorChoice® Trademarks, Plant Tags and/or Containers With Any Other Unlicensed Products – Plant tags may only be used with the original plants provided.
8. Re-Selling or Giving Away Proven Winners' Plant Tags Or Containers Is Strictly Prohibited.
9. Container for Finished Container Plant Sales -- Licensee must sell Finished Container Plants in Proven Winners® ColorChoice® branded containers which are available from Licensor unless licensee is participating in the Proven Winners® ColorChoice® decorative container program. Proven Winners® ColorChoice® containers may only be used for Proven Winners® ColorChoice® varieties. Branded containers are available in 5 sizes. Premium one gallon, Premium two gallon, Premium three gallon, five gallon and seven gallon.
10. Proprietary Rights – Licensee agrees to properly use and display patent, breeder rights and trademark on Exhibit A. Licensee agrees not to contest, challenge, attack validity of Proprietary Rights.
11. Licensee Owns No Rights In Mutations -- Licensee shall report to Licensor immediately any sport, bud mutation, or mutant (defined as a sudden heritable change appearing in a plant as the result of a change in genes and chromosomes which may or may not result in a superior plant) found in the Licensed Products. Upon request of the Licensor, the Licensee shall provide the Licensor all requested material of the sport, bud mutation, or mutant. Any sport, bud mutation, or mutant found in the Licensed Product is and shall be the property of the Licensor, breeder or plant patent owner.
12. Breeding & Hybridization – Licensee agrees not to directly or indirectly or in conjunction with others use Licensed Product for the purposes of breeding or hybridization. Any sexually derived progeny, either planned or unintentional, shall be considered a Sport subject to Section 11
13. Quality Control Standard – Licensee shall not ship, sell, or distribute plants of the Licensed Products unless they are in a healthy condition and of a size and appearance appropriate for retail sale.
14. Quality Standard Pricing applies to all wholesale Finished Plant sales after 1-1-2013. See your vender or Licensor for a current copy of the Quality Standard Pricing agreement.
15. Right of Inspection -- Licensee agrees to allow Licensor or Licensor's agents or representatives to inspect and inventory at any reasonable time, the Licensee's premises and plantings to ensure compliance with this License Agreement. Refusal to allow inspection shall result in the immediate termination of this License Agreement.
16. Termination -- Upon breach by the Licensee of any terms of this License Agreement, the grant of rights to Licensee under this License Agreement is immediately terminated. In this event, or upon termination of this License Agreement, for any reason, Licensee agrees to destroy all plants, cuttings, buds, and other plant parts capable of reproduction of the Licensed Products and all plants, cuttings, buds, and other plant parts capable of reproduction, originating from the existing plant matter. Licensor may also pursue all legal remedies available, to the fullest extent of the law, for the recovery of further damages, including without limitation, incidental, consequential, punitive, statutory, and infringement damages, lost profits and all forms of injunctive relief.
17. Choice of Forum – In any legal action arising out of this License Agreement, or arising from infringement of Licensor's rights, Licensee hereby consents to the jurisdiction of the State Court or Federal Court chosen by the Licensor.
18. Attorney Fees -- In any legal action arising out of this License Agreement, or arising from infringement of Licensor's rights, Licensor is entitled to reasonable attorney fees and costs.
19. Non-Assignability -- Licensee may not assign this License Agreement.
20. Severability -- If any of the provisions of this License Agreement are, or become, invalid or unenforceable, the remaining provisions shall be, and continue to be, fully effective.

**For questions regarding this agreement contact your supplier or contact the
Proven Winners® ColorChoice® Licensor Spring Meadow Nursery Inc. 800-633-8859**

