



SEED LICENCE AND ROYALTY AGREEMENT

THIS AGREEMENT CONTAINS LEGAL OBLIGATIONS

PLEASE READ CAREFULLY BEFORE APPLYING FOR YOUR NGR (NATIONAL GROWERS REGISTER) OR HERITAGE SEEDS e-EPR GROWER NUMBER WHEN PURCHASING HERITAGE SEEDS PLANT VARIETIES.

- A. This Agreement contains the only Terms and Conditions under which The Grower may purchase and grow Seed (as hereinafter defined) of the Plant Varieties (as hereinafter defined) from a Heritage Seeds authorized distributor.
- B. In respect of the Plant Varieties, Heritage Seeds is either:
 - (i) The Licensee of the grantee of PBR in the Plant Varieties; or
 - (ii) The Sole Agent of the Licensee of the grantee of PBR in the Plant Varieties; or
 - (iii) An Agent for the supplier of Seed of a Plant Variety.
- C. The Terms of this Agreement (as amended from time to time in accordance with clause 12.1.1 will apply to each purchase of Seed made by The Grower or an authorized representative on The Grower's behalf from a Heritage Seeds Authorized Distributor. By purchasing a Heritage Seeds Plant Variety, The Grower represents that it has read, understood and agreed to be bound by this Agreement. Each time a purchase is made for Seed, it forms an agreement to be bound by this Agreement in respect of the particular purchase.
- D. Except as expressly provided herein, no license is granted to The Grower to deal with any Seed or Grain of the Plant Varieties. Any such dealing not authorised under this Agreement may, in addition to being a breach of this Agreement, constitute an infringement of ant PBR in that Plant Variety.

1. DEFINITIONS AND INTERPRETATION:

The following definitions and interpretation apply to this Agreement:

- 1.1 **Crop** means, in relation to a Plant Variety, the product of the propagation of Seed or Grain of the Plant Variety.
- 1.2 **Grain** means grain produced by The Grower's Propagation of Seed.
- 1.3 **The Grower** means the person/entity whose particulars are included in the Heritage Seeds e-EPR Registration Data below and who has agreed to acquire Seed and grow Grain upon the Terms and Conditions contained herein.
- 1.4 **GST** means the same as in the A New Tax System (Goods and Services Tax) Act 1999, as amended from time to time.
- 1.5 **Heritage Seeds** refers to Heritage Seeds Pty Ltd ABN 43 007 614 379 and/or its parent entities and subsidiaries.
- 1.6 **Propagation** means, in relation to Seed or Grain the growth, culture or multiplication of that Seed or Grain by whatever means.
- 1.7 **Royalty** means the End Point Royalty payable pursuant to clause 4 below.
- 1.8 **Royalty Deductor** means an Organization with whom Heritage Seeds has entered into a Collection Arrangement pursuant to which the Royalty is deducted from any amount(s) otherwise payable to that Organization.
- 1.9 **Seed** means, in relation to a Plant Variety, Propagating Materials (as defined in section 3 of the PBR Act) of that Plant Variety.
- 1.10 **PBR** in respect of a Plant Variety means the Plant Breeders Rights as granted under the PBR Act in respect of that Plant Variety.
- 1.11 **PBR Act** means the Plant Breeders Rights Act 1994 (Commonwealth) as amended from time to time.
- 1.12 **Plant Variety** means Plant Variety specified in the Schedule of Seed Varieties.
- 1.13 **Permitted Use** means, for Grain of the Plant Variety, its use as food for human or animal consumption/stockfeed, food ingredient, fuel or any other purpose that does not involve the production or reproduction or Seed or Grain.
- 1.14 **Heritage Seeds Representative** means a person authorised and appointed by Heritage Seeds.
- 1.15 **The Principal** means Heritage Seeds or another party noted in the Schedule of Seed Varieties who holds PBR rights to the Plant Variety.
- 1.16 **Territory** means Australia.
- 1.17 **Term** is 20 years from the date of purchase of the Seed of the Plant Variety unless terminated earlier according to clause 9.

- 1.18 **Schedule of Seed Varieties** means the schedule annexed hereto which lists the Plant Varieties in respect of which these Terms and Conditions apply. The Schedule of Seed Varieties may be revised by Heritage Seeds from time to time.
- 1.19 Each Party includes its successors and permitted assigns. The singular includes plural and vice versa. The word *person* includes a body.
- 1.20 If The Grower consists of more than one person, each person is jointly and severally liable under this Agreement.

2. SUB-LICENCE TO REPRODUCE GRAIN

- 2.1.1 Upon the Terms and Conditions contained herein, The Principal hereby grants The Grower in respect of any Seed purchased from a Heritage Seeds Authorized Distributor a license to plant and grow that Seed to produce Grain and to sell or otherwise dispose of that Grain for a Permitted use.
- 2.1.2 In respect of any Grain produced by The Grower pursuant to the license granted herein, The Grower may retain from such Grain any amount for:
- (i) Subsequent planting PROVIDED HOWEVER that these Terms and Conditions will continue to apply to such grain and to the Grain produced there from, including but not limited to clause 4; or
 - (ii) Use as Stock Feed.
- 2.1.3 For the avoidance of doubt, The Grower acknowledges and agrees that it cannot sell or otherwise dispose of Seed or Grain for use as propagating material. The Grower shall not offer for sale, sell or otherwise dispose of or supply Seed or Grain to any person if there is any reason to believe that that person will use or deal with the Seed or Grain other than for Permitted Use.
- 2.2 All purchases of Seed by The Grower or on The Growers' behalf must be made using The Grower's Heritage Seeds *e-EPR* Grower Code and/or their National Grower Register Number (NGR).
- 2.3 The Grower must keep the Plant Variety segregated from other crops when planted to ensure that there is no cross breeding or fertilisation of the Plant Variety.
- 2.4 The Grower will not, and The Grower will ensure that The Grower's employees, agents and contractors do not, use the Seed or Grain other than in accordance with this Agreement.
- 2.5 On each occasion when The Grower delivers or sells Grain to a third party (including but not limited to a grain handling agent) the name of the Plant Variety (ies) must be accurately disclosed in writing to the third party and if there are any other varieties present in the delivery The Grower must disclose in writing the amount of each plant variety present.
- 2.6 If The Grower sells or otherwise disposes of any standing crop of the Plant Variety or sells or otherwise parts with possession of land on which any Plant Variety is growing, The Grower must within 21 days give Heritage Seeds written notification of the transaction stating the name and address of the third party.

3. REPORTING REQUIREMENTS

- 3.1 In respect of every Crop of any Plant Variety harvested, and otherwise where specifically requested by The Principal, The Grower will forthwith provide to The Principal in the form of a Harvest Declaration the following details:
- (i) Quantity of Seed acquired;
 - (ii) Total Quantity of Grain harvested;
 - (iii) Quantity of Seed retained for future planting (EPR not applicable);
 - (iv) Quantity of Grain Warehoused for future sale (EPR not applicable until sold);
 - (v) Quantity of Seed or Grain used or held back for Stock Feed (EPR applicable)
 - (vi) Quantity of Grain delivered to an approved Royalty Deductor e.g. Viterro (EPR is deducted automatically);
 - (vii) Quantity of Grain sold to Grain Traders, Millers and Feed Users (EPR applicable);
 - (viii) Such other information relating to the Crop as Heritage Seeds may request from time to time.

The Grower acknowledges and accepts that The Principal reserves the right to make random audits to verify the information provided by The Growers. This Right includes The Right to contact any of Heritage Seeds's Authorized Distributors or any person to whom The Grower may have delivered Grain (for storage or otherwise) to verify any of the details The Grower has provided.

- 3.2 The Grower warrants that all information provided by or on behalf of The Grower to The Principal shall be true, accurate and complete and not misleading as to any fact or intention.

4. ROYALTY PAYMENTS

- 4.1.1 The Grower acknowledges and confirms that in respect of Grain retained from a Crop for subsequent planting, a Royalty is payable on each crop as provided herein. The Royalty is payable at the rate set out in the Schedule of Seed Varieties for the particular Plant Variety and is calculated on a per metric tonne basis. The Royalty provided for herein is exclusive of GST and any other tax, levy or other similar payment due in respect of any transaction involving the Crop or any part thereof, all of which shall be borne by the Grower. For the purpose of this clause a reference to "Royalty" shall include any additional amounts payable by The Grower as provided herein.
- 4.1.2 The Royalty obligations herein apply whether or not the relevant Plant Variety is the subject of PBR or has been but ceases to be the subject of PBR.
- 4.2 For the purpose of clarification, it is acknowledged that a Royalty is due and payable on any disposal or supply of Grain by The Grower to a third party, whether for value, monetary consideration or otherwise, and on any use of the Grain by it as Stock Feed.
- 4.3 Unless The Royalty is deducted in accordance with clause 4.5, The Grower must within 35 days of delivery of Grain to a third party (whether in the context of a sale, barter, exchange or other transaction whatsoever) pay to The Principal the Royalty due by cheque to the address nominated by The Principal from time.
- 4.4 Further, each Royalty payment must be accompanied by the following information:
 - (a) The quantity (in tonnes) of Grain produced and /or sold or otherwise disposed of by The Grower;
 - (b) The name and address of each recipient (whether or not an accredited grain marketer) of the Grain and how much Grain was delivered to each recipient.
- 4.5 Where Grain is supplied or delivered to a Royalty Deductor, The Grower hereby authorizes and requests The Royalty Deductor to deduct the End Point Royalty due in relation to that Grain from the price to be paid to The Grower for that or any other grain and to pay such sum to The Principal for the account of The Grower in or towards satisfaction of The Grower's Royalty obligations under this Agreement. The Grower will receive a tax invoice after deduction of the Royalty.
- 4.6 In all cases it is The Grower's responsibility to provide The Principal/Royalty Deductor with the relevant information to enable an appropriate tax invoice to be issued by The Principal/ Royalty Deductor.
- 4.7 The Grower shall pay interest to The Principal on all outstanding amounts due and payable to The Principal as Royalties under this Agreement at the Commonwealth Bank's overdraft Index rate applicable on the date the outstanding amount is due and payable until the amount is paid in full.
- 4.8 The Principal may increase the Royalty rates (as set out in the Schedule of Seed Varieties) upon written notice to The Grower, provided that no increase will take effect on less than three (3) months notice.
- 4.9 The Principal retains the right to deduct any Royalty due against any payments owing by The Principal to The Grower from time to time whether under this Agreement or otherwise.
- 4.10 The Principal may give Royalty Deductors personal information about The Grower (including name, address, NGR number and *e-EPR* Grower Code). The Royalty Deductors may collect and use the information for the purpose of collecting Royalties and fees and for related purposes.

5. MAINTENANCE AND INSPECTION OF RECORDS

- 5.1 The Grower shall maintain for a period of seven (7) years separate, accurate and comprehensive records and accounts of the purchase of all Seed, the production and disposal (whether by sale or otherwise) of all Grain, the Grain retained by The Grower from each Crop, and any other information referred to herein or reasonably requested by The Principal from time to time.
- 5.2 The Grower shall permit a Principal Representative from time to time during ordinary business hours to inspect and verify all or any records and accounts required to be maintained by The Grower and The Grower shall give all assistance necessary to The Principal representative to carry out such inspection and verification and permit The Principal Representative to take copies of any such records.
- 5.3 The Grower agrees that any finding or decision made by The Principal Representative is final and conclusive. The Grower agrees to pay any invoice issued by The Principal or The Principal Representative within 7 days and to indemnify The Principal for all costs it incurs as a result of any inspection under clause 5.2, where it is found as part of that inspection that further payment is required to be made to The Principal.

6. GROWING STANDARDS

- 6.1 The Grower will monitor Crop production and immediately inform Heritage Seeds of any mutant or derived forms of Plant Variety.
- 6.2 The Grower will assign to Heritage Seeds or to Heritage Seeds's nominee, all right, title and interest of The Grower (including but not limited to the right to apply for PBR) in any mutant or derived forms of a Plant Variety.
- 6.3 The Grower acknowledges that all right, title and interest (including but not limited to the right to apply for Plant Breeders Rights or any other form of protection both in Australia and overseas) in respect of any mutant or derived forms of a Plant Variety which come into existence in the course of The Grower's involvement with any Plant Variety shall vest in and remain with Heritage Seeds or such other entity as Heritage Seeds may nominate. The Grower shall promptly notify Heritage Seeds of any mutant or derived form of any Plant Variety which may come into existence and shall thereafter take such steps as Heritage Seeds may advise in order to give effect to this clause.
- 6.4 Heritage Seeds or any Heritage Seeds representative may enter upon any land on which the Seed is being grown to inspect the Crop.
- 6.5 The use by The Grower of hormones, chemicals and sprays ("chemicals") in respect of the Seed is beyond the control of The Principal and, accordingly, The Principal shall bear no responsibility or liability for such use of any chemicals. Furthermore, no warranty is given by, sought from or implied against The Principal as to the merchantability or fitness for the purpose to which any chemicals are applied by The Grower or the consequences of the use of any such chemicals. The Grower further acknowledges and agrees that The Principal shall bear no responsibility whatsoever for any chemicals applied by The Grower arranged by or invoiced through The Principal.
- 6.6 The Grower must obtain and maintain, at all times, in its name and for the express benefit of The Principal for their respective rights, interests and liabilities arising out of this Agreement, public liability insurance for an amount of not less than AUD\$20 million in respect of personal injury or death arising by accident of any person whomsoever and product liability insurance for an amount of not less than AUD\$20 million in respect of any injury, loss or damage whatsoever arising by negligence or accident or otherwise howsoever to any real or personal property of any person whatsoever arising from or otherwise as a direct or indirect result of any negligent or wrongful or unauthorized act or omission by The Grower in connection with the exercise of its rights under this Agreement. The grower will on request provide to the principal copies of certificates of currency or other information pertaining to these insurance provisions.

7. WARRANTY AND LIMITATION OF LIABILITY

- 7.1 The Grower acknowledges and confirms that in respect of any Seed purchased by The Grower from a Heritage Seeds authorized distributor that:
 - (a) Prior to delivery of the Seed to The Grower, The Grower will see and read the seed quality certificate applicable to that seed as issued by Heritage Seeds;
 - (b) Prior to delivery of the Seed to The Grower, The Grower will inspect the Seed for quality and fitness purpose.
- 7.2 Subject to the provisions of any applicable legislation which prohibits the exclusion, restriction or modification of a party's liability, and direction given by and any advice, recommendation, information, assistance or service provided by Heritage Seeds pursuant to this Agreement is given in good faith without any liability whatsoever and howsoever arising on its part.
- 7.3 To the extent permitted by law and subject to clause 7.4 neither Heritage Seeds nor, if applicable, The Owner(s) of any PBR in the relevant Plant Variety(ies) make any representation or warranty, express or implied, in relation to the Seed, including but not limited to and representation or warranty as to its merchantability or fitness for a particular purpose. All implied Terms, Conditions and Warranties (whether statutory or otherwise) and all other potential liabilities applicable to Heritage Seeds or any relevant PBR owner(s) in relation to any Seed howsoever arising (whether under statute, contract, tort including negligence, or otherwise howsoever) are hereby excluded.
- 7.4 If the *Trade Practices Act 1974* (Commonwealth) or any other Australian Federal, State or Territory Act implies onto this Agreement any Term, Condition or Breach is (if permitted by the relevant Act) limited to, at Heritage Seeds's' election:
 - (a) The replacement of the Seed or the supply of Seed of an agronomically equivalent Plant Variety; or
 - (b) The payment of the cost of replacing the seed or acquiring Seed of an agronomically equivalent Plant Variety.

8. INDEMNITY

The Grower hereby indemnifies and shall keep indemnified and hold Heritage Seeds and the owners of any PBR in the relevant Plant Variety(ies) harmless from and against all and any liabilities, actions, proceedings, claims or demands against losses, damages, costs or expense of The Grower of whatsoever kind whether direct or indirect and whether for property damage, economic loss, consequential loss, personal injury or otherwise howsoever, arising in any way from any conduct by it or by any person for whom it is vicariously liable in relation to any Seed or Grain.

9. TERMINATION

- 9.1 This Agreement shall take effect on the date that the Grower purchased a Heritage Seeds Plant Variety and shall, subject to this clause, continue for the term.
- 9.2 The Principal may terminate this Agreement immediately upon notice in writing in the event that:
 - 9.2.1 The Grower breaches a provision of this Agreement and where such breach is capable of being remedied, does not remedy such breach within thirty (30) days of notice of such default from The Principal;
 - 9.2.2 The Grower breaches a provision of this Agreement and such breach is not capable of being remedied;
 - 9.2.3 (i) The Grower has an order made or resolution passed for its winding up (where such winding up is other than for the purposes of reconstruction or amalgamation), is placed under official management, has an inspector or inspectors appointed to investigate its affairs, has a receiver and/or manager and/or administrator appointed, or becomes insolvent or unable to pay its debts as provided under the *Corporations Act 2001* or other applicable legislation;
 - 9.2.3 (ii) Distress or execution is levied upon or against or in relation to any of The Grower's assets or undertakings or any encumbrance takes possession of the whole or any part of its assets or undertaking.
 - 9.2.4 Any of the information provided by The Grower as required hereunder is inaccurate.
- 9.3 The Grower may terminate this Agreement within 14 days from receipt of notice that:
 - (a) The Principal intends to increase the rate of The Royalty as notified in accordance with clause 4.8;
 - (b) The Agreement is varied in accordance with clause 12.1
 - (c) Where the Grower does not accept the proposed increase or variation, as the case may be.Termination pursuant to this clause shall be effected by notice in writing from The Grower to Heritage Seeds.
- 9.4 The Principal may terminate this Agreement by giving one (1) years notice in writing to The Grower if the Head License which The Principal has received in relation to the Plant Variety is terminated for any reason.
- 9.5 The expiry or termination of this Agreement shall be without prejudice to the rights of either party accrued to the date of expiry or termination.

10. CONSEQUENCES OF EXPIRY OR TERMINATION

- 10.1 Upon the expiration or termination of this Agreement, all rights and licenses granted to The Grower hereunder shall forthwith cease PROVIDED HOWEVER that except where The Principal exercised its rights under clause 10.2 The Grower may harvest Grain from crops growing at the time of termination or expiration and may sell or use the Grain, for Permitted Use, subject to the same obligations applicable before expiration or termination.
- 10.2 Upon termination of this Agreement, The Principal may at its option direct The Grower to destroy all or any Seed, Grain, Crops and plants of any Plant Variety in the possession or control of The Grower at the time of termination or deliver up the same to The Principal or its nominee. Upon destruction or delivery up The Grower shall be entitled to payment of an amount equal to the market value of the said Seed, Grain, Crops or plants subject to the Principal's rights of set-off as provided under this Agreement.
- 10.3 Survival of Provisions:
 - The Grower's obligations and The Principal's rights under this Agreement survive the expiration or termination of this Agreement.

11. SAMPLE FOR SEED VARIETY OWNER

The Grower will take all reasonable steps to obtain the consent of all purchasers of Grain, Grain receivers, purchasing facilities or marketing organizations to allow The Principal and The PBR owner(s) of the particular Plant Variety (ies) to access information they hold relating to the Grain sourced from The Grower and to take representative samples (not exceeding 50 grams) from each delivery of Grain sourced from The Grower for testing purposes.

12. GENERAL MATTERS

- 12.1 This Agreement contains the entire Agreement between the parties with respect to its subject matter and fully replaces any previous Understandings, Agreements, Representations or Warranties relating to that subject matter.
 - 12.1.1 Heritage Seeds may from time to time at its discretion change, modify, add or remove any of the Terms and Conditions of this Agreement. The current version of this Agreement will be posted at all times on its website. Copies of the current version of this Agreement will otherwise be available from Heritage Seeds on request. All purchases of Seed by The Grower from Heritage Seeds or a Heritage Seeds Authorized Distributor will be deemed to be made pursuant to the then current version of this Agreement.
 - 12.1.2 Without limiting the generality of the foregoing, Heritage Seeds may vary this Agreement to reflect the Terms of any Head License it holds in respect of a Plant Variety (or any subsequent amendment thereof by providing The Grower with 14 days notice of such variation). Subject to clause 9.30 any variation to this Agreement shall take effect at the end of the said 14 day notice period.
- 12.2 Any notice required to be given by one party to another hereunder shall (unless otherwise agreed in writing) be in writing and may be given by transmitting the same by prepaid mail to address of the recipient party set out herein or such other address as the recipient party may have notified the other party in writing as being its address for the services of notices. Any notice given by mail as aforesaid shall be deemed to have been served on the third day following posting whether or not it is received by the recipient party. Any notice may also be given by email and such notice shall be deemed to have been received when the sender receives a delivery receipt. Any notice may also be given by facsimile to the facsimile number of the recipient party and any such notice shall be deemed to have been served upon the transmission of the notice to the relevant facsimile number and the receipt by the transmitting facsimile machine of an answerback code showing that the facsimile message has been received properly by the facsimile machine to which it was transmitted.
- 12.3 A person's postal address, email address and facsimile number shall be included in the Registration Data below as provided in The Grower Details. The parties shall send a notice to the other party in accordance with this clause of any change in its postal address, email address or facsimile number.
- 12.4 The Grower cannot assign any rights or transfer its obligation under this agreement without the prior written consent of Heritage Seeds which it can withhold at its discretion. The Principal may assign its Rights and transfer its obligations contained in this Agreement to any third party and The Grower hereby agrees to such assignment and transfer.
- 12.5 This Agreement shall be construed and governed by Laws in force in South Australia, Australia from time to time and only the Courts of South Australia and the Courts hearing appeals there from shall have jurisdiction over any dispute hereunder.
- 12.6 No forbearance, delay or indulgence by The Principal to enforce the provisions of The Agreement shall prejudice or restrict its Rights, nor shall any waiver of its Rights operate as a waiver of any subsequent breach or in any way affect the validity of the whole or any part of this Agreement not prejudice The Principal's Right to take subsequent action.

In consideration of your use of your Heritage Seeds *e-EPR* Grower Code and/or National Grower Register number (NGR) you represent that you are of legal age to form a binding contract, and that the Registration Data provided about yourself as prompted by The Grower Details below is True, Accurate, Current and Complete.

The collected Registration Data is subject to our Privacy Policy.

Unless The Grower advises otherwise, The Principal may use the Registration Data to inform The Grower of Products that may be of interest to The Grower. If you do not wish your Registration Data to be used for marketing purposes please contact Heritage Seeds EPR Coordinator on 08 7224 2614.