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## **VARIETY LICENSE**

*(This License is based on the Standard Industry Agreement adopted by the majority of Plant Breeding and Commercialisation companies in Australia)*

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**YOU WILL BE TAKEN TO HAVE READ, UNDERSTOOD AND ACCEPTED THE TERMS BELOW BY ACCEPTING OR USING THE SEED**

**THIS CONTRACT IS MADE BETWEEN US, AS THE PBR OWNER OR AUTHORISED DISTRIBUTOR OF THE SEEDS, AND YOU, AND SETS OUT THE TERMS AND CONDITIONS PURSUANT TO WHICH YOU WILL BE AUTHORISED TO ACQUIRE AND GROW SEEDS AND TO SELL AND OTHERWISE USE THE GRAIN**

**1 Meaning of Words**

The meaning of words starting with a capital letter that are used in this Contract is set out in Schedule 1.

**2 Grant of License**

- (a) In return for You agreeing to the terms and condition of this Contract and paying the EPR, We grant You a non-exclusive license to use the Licensed Varieties to:
  - (i) plant Seed on Your own farm or farmland under Your control to produce grain or fodder;
  - (ii) produce more grain or fodder on Your own farm using Retained Seed; and
  - (iii) Sell grain or fodder other than for the purpose of further propagation.
- (b) You acknowledge and agree that any Essentially Derived Variety, or any Improvement in respect, of any Licensed Variety arising or resulting from the Use of any Seed or Retained Seed acquired by You will be owned by the owner/s of the PBR and You will on request and at Your own cost do all things necessary to give effect to this clause, including but not limited to assign and transfer any and all right, title and interest in the Essentially Derived Variety and the right to apply for protection of that Essentially Derived Variety, anywhere in the world, to the said owner/s of the PBR or its/their nominee.

**3 What You cannot do**

You agree that You are not to Sell any Harvested Material for use as a Propagating Material without Our express written permission.

**4 Notice to declare production of Harvested Material**

- (a) On or before 31 March each year, We will provide, or arrange for a third party to provide, You with a notice to declare Your production of Harvested Material for the previous twelve month period. You must accurately complete and return the notice as directed by that notice.
- (b) If for any reason You do not receive such a notice by 31 March, You must provide to Us a written notice by 30 April with the following information for the previous twelve month period:
  - (i) Your name and address;
  - (ii) the variety/ies and quantity/ies of Harvested Material produced by you;
  - (iii) the variety/ies and quantity/ies of Harvested Material Sold by You and the name of each purchaser;
  - (iv) the variety/ies and quantity/ies of Retained Seed;
  - (v) the variety/ies and quantity/ies of Harvested Material that has been or is intended to be Consumed;
  - (vi) the variety/ies and quantity/ies of Harvested Material that are stored or warehoused for future sale; and
  - (vii) the total End Point Royalty due to Us in relation to the Harvested Material.
- (c) In addition to the information You are required to provide under clauses 4(a) and 4(b) (above), You must provide any other reports or information set out in any Schedule.
- (d) You agree that:

- (i) any Authorised Distributor may pass on Details to Us; and
- (ii) any entity that stores, warehouses, conditions, purchases or Sells the Harvested Material that You produce may pass on Details to Us.

## **5 Payment of End Point Royalty**

- (a) You must pay to Us, by 30 April each year, (or by such later time as notified to You in writing by Us where clause 4(b) applies) the End Point Royalty (and applicable GST) as set out in Schedule 2 for each tonne of Harvested Material Sold or Consumed by You for the previous twelve-month period.
- (b) Where clause 6 does not apply, We will, upon receipt of the information required to be provided by You under clause 3, issue a tax invoice to You for the End Point Royalty payable by you.
- (c) We reserve the right to charge interest on overdue amounts at the rate specified in Schedule 3.

## **6 Royalties deducted by EPR Collector**

- (a) If You Sell Harvested Material to an EPR Collector, You agree that the EPR Collector will:
  - (i) deduct End Point Royalties (including GST) in relation to the Harvested Material Sold from the Sale price to be paid by the EPR Collector to You for that Harvested Material;
  - (ii) pay the sums deducted under clause 6(a)(i) to Us in or towards satisfaction of Your obligations under this Contract to pay the End Point Royalty with respect to the Harvested Material, and;
  - (iii) provide Details to us.
- (b) We will require the EPR Collector to issue a tax invoice to You for the amount of End Point Royalty (including GST) deducted and paid to Us by the EPR Collector.

## **7 Your other Obligations**

You must:

- (a) make sure that anything You do under this Contract complies with all applicable laws;
- (b) at or before the point of sale, declare to any purchaser (including any EPR Collector) of Harvested Material, the name of the particular Licensed Variety that is or will be sold to that purchaser;
- (c) promptly notify Us if You become aware of any unauthorised propagation, production, reproduction, sale or use of any grain or fodder; and
- (d) if You plan to sell any property on which Seed or Retained Seed has been planted:
  - (i) notify Us and provide details of the purchaser;
  - (ii) make sure that it is a condition of sale that the purchaser takes over Your obligations under this Contract; and
  - (iii) pay or have paid all EPRs due on any Harvested Material that is on the property at the date of sale.

## **8 Records and Sample Collection**

- (a) You must:
  - (i) keep records in sufficient detail to enable all EPRs to be easily and accurately determined;
  - (ii) keep the records for 7 years from the date you Sell any Harvested Material.
  - (iii) within 30 days after receiving a request from us, make those records available to Us or an auditor appointed by us;

- (iv) upon giving reasonable notice permit Us or any agent nominated by Us to enter Your premises or any premises under Your control during normal business hours to inspect and audit all relevant records, and pay all audit fees (on an indemnity basis) where the audit report indicates that You have underpaid, under-estimated or under-calculated any amount due as EPRs by more than five per cent (5%) and also pay the full amount of any shortfall (inclusive of any GST or other taxes owing on such amount).; and
- (v) if an audit is conducted and the audit report indicates that You have underpaid, under-estimated or under-calculated any amount due as EPRs by more than (5%) You may be required to:
  - (A) pay all audit fees (on an indemnity basis);
  - (B) pay the full amount of any shortfall (inclusive of any GST or other taxes owing on such amount); and
  - (C) pay interest on the amount of EPR owing at the rate outlined in Schedule 3. Interest will be charged from the 1st of April in the year the EPR's owing were normally required to be paid.
- (b) If any audit shows that You have overpaid Us by more than 5% We will credit the overpayment against future payments.
- (c) You agree that upon giving reasonable notice to You, We or an agent nominated by Us may collect images and/or samples of Your plants and/or grain either on farm or at point of delivery (without notice) for the purpose of examining and verifying the variety.

## 9 Promises and exclusions

- (a) We warrant that:
  - (i) We have all rights necessary to grant You the permission and License contained in clause 2; and
  - (ii) the Seed You buy from Us or an Authorised Distributor will be unencumbered and will not be subject to any obligations to anyone else unless We have told You about those obligations.
- (b) Except to the extent provided in clause 9(a) (above), We exclude all terms, conditions and promises implied by custom, the general law or statute, except any promises that cannot be excluded by Law.

## 10 Liability

- (a) You:
  - (i) acknowledge that You Use the Licensed Varieties at Your own risk;
  - (ii) indemnify Us against all Loss incurred by Us and resulting from Your Use of any Seed, Retained Seed or Harvested Material or any breach of this Contract.
- (b) If We contribute to any Loss which We have asked You to pay under clause 10(a), then You don't have to pay Us for the portion of the Loss that We contributed to.
- (c) Except to the extent provided under non-excludable or unavoidable Law, We exclude all liability for any special, indirect or consequential damages arising out of Your Use or dealings with any Seed, Retained Seed or Harvested Material.

## 11 Dispute resolution

- (a) The Parties shall without delay and in good faith attempt to resolve any dispute within thirty (30) days of the date one Party notifies the other in writing of the dispute.
- (b) Any dispute or difference arising out of or in connection with this Contract will be submitted to an expert in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules.

**12 Term**

This Contract takes effect from the date on which You accept or Use any Seed and, subject to clause 13, continues in relation to each Licensed Variety until it is terminated in accordance with its terms.

**13 Rights to end Contract**

- (a) Either of Us may end this Contract immediately by giving notice to the other if the other:
  - (i) breaches any provision of this Contract and fails to fix the breach within 30 days after receiving notice asking it to do so; or
  - (ii) breaches a provision of this Contract where that breach cannot be fixed.
- (b) We may end this Contract immediately by giving notice to You if You are unable to pay any of Your debts (including EPRs) as and when they become due.
- (c) This Contract terminates automatically with respect to a particular Licensed Variety if We lose the right to grant the License in respect of that Licensed Variety.

**14 At the end of Contract**

At the end of this Contract:

- (a) the License ends;
- (b) you must pay the EPR Collector or Us any amounts outstanding;
- (c) except as provided under clause 14(d) You must promptly:
  - (i) Sell or destroy all Harvested Material;
  - (ii) destroy all Seed; and
  - (iii) destroy all Retained Seed or Sell the Retained Seed other than for further propagation, and pay the applicable EPR on the Harvested Material and the Retained Seed Sold;
- (d) you may grow out any crop planted at the end of this Contract and Sell or Consume the Harvested Material from that crop and must pay EPR on that Harvested Material, but You must not plant any new crops using the Harvested Material;
- (e) the following clauses continue, along with any other clause intended to continue after this Contract ends: clauses 8 (Records), 9 (Promises and Exclusions), 10 (Liability) and this clause; and
- (f) accrued rights and remedies are not affected.

**15 Notices**

- (a) Any notices under this Contract must be in writing and must be given in accordance with clauses 15(b) and 15(c).
- (b) A notice given in accordance with this clause will be deemed received:
  - (i) if left at the recipient's address, on the date of delivery;
  - (ii) if sent by prepaid post, 10 days after the date of posting unless it is in fact received earlier, in which case, on the date of receipt;
  - (iii) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; or
  - (iv) if sent by email, when the sender's email receives no notification of an inability to successfully transmit the email; or

- (v) when posted to Our website and/or posted to the Variety Central website ([www.varietycentral.com.au](http://www.varietycentral.com.au)).
- (c) Only matters of a general nature relating to more than one grower may be the subject of a notice given in the manner described in 15(b)(iv) above. Notices given specifically to You must be addressed to the relevant contact person in Schedule 3 or to the address provided by the Authorised Distributor or EPR Collector.

## **16 Waiver**

The failure of either of Us at any time to insist on performance by the other of any obligation under this Contract is not a waiver of any right to claim damages for breach of that obligation unless We acknowledge in writing that the failure is a waiver.

## **17 Amendment**

- (a) You and We agree:
  - (i) to the terms of this Contract in the form acknowledged/ agreed by you on the date of acknowledgement/ agreement (the **Contract Date**); and
  - (ii) such terms apply between us to the relevant Seed from the Contract Date until the first occurring 28 February immediately after you first Plant any of that Seed.
- (b) Subject to clause 17(a)(ii), You agree that We may update the terms of this Contract from time to time with effect on and from each 28 February in any calendar year (the **New Contract Date**). If this occurs, We will post the new Contract to Our website and use reasonable endeavours to give you notice of the same before the New Contract Date. By Planting, Producing and/ or Selling as permitted by this Licence on and from the New Contract Date, You agree to the new Contract on and from the New Contract Date. If you do not agree to the new Contract, then this License ends on the New Contract Date and clause 14 applies.
- (c) Subject to clause 17(b), the terms of this Contract may be amended by agreement between the parties.

## **18 Severability**

If part or all of any clause of this Contract is illegal or unenforceable it will be severed from this Contract and will not affect the continued operation of the remaining provisions.

## **19 Assignment**

Except to the extent necessary to comply with clause 7(d)(ii), You must not assign or transfer or attempt to assign or transfer any obligation or right arising out of this Contract, without Our written consent.

## **20 Entire Contract**

This Contract and schedules records the entire agreement between each of Us and supersedes all earlier agreements and representations by either of us.

## **21 Governing Law**

This Contract will be governed by the laws of South Australia and the Courts of that State will have jurisdiction over all matters arising under it.

## SCHEDULE 1 – GLOSSARY

In this contract:

**Authorised Distributor** means us, or a distributor authorised by Us to Sell Seed to you.

**Consume** means to use Seed so that it cannot be further propagated.

**Contract** means this agreement together with its schedules.

**Details** means details of the Licensed Varieties, details of the Sale/purchase of Seed and Harvested Material, Your name, Your address, and details of Your business or company (including ABN and CBH and/or NGR number).

**End Point Royalty** or **EPR** means the royalty payable by You for every tonne of Harvested Material Sold or Consumed by you, or Retained Seed Sold by You as permitted by clause 14(c)(iii).

**EPR Collector** means us, or any third party with whom We have entered into an EPR collection arrangement.

**Essentially Derived Variety** has the meaning given to it in the PBR Act, namely, a plant variety (as defined in the PBR Act) is taken to be an essentially derived variety of another Plant Variety if:

- (a) it is predominantly derived from that other Plant Variety; and
- (b) it retains the essential characteristics (as defined in the PBR Act) that result from the genotype or combination of genotypes of that other variety, and
- (c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.

**Harvested Material** means the grain or fodder from crops of the Licensed Varieties grown from Seed or Retained Seed.

**Improvements** means any improvement, enhancement, modification, adaptation, extension, mutation, derivative or essentially derived variety of any Intellectual Property Right.

**Intellectual Property Rights** (or **IPRS**) means patents, trademarks, copyrights, PBRs (or any plant breeders' rights/ varieties or similar rights or property), inventions, processes, designs, formulae, trade secrets, know-how, industrial models, confidential technical and business information, manufacturing, engineering and technical drawings, and product specifications and all applications, reissues, renewals, extensions, continuations, registrations in respect of the same and includes intellectual property rights similar to any of the above and all applications to acquire, and all rights to acquire and apply for issuance and/or registration of any of the rights referred to above, and copies and tangible embodiments of any of the foregoing (in whatever form or medium, including electronic media), in any case whether pending or not, or whether registered or not.

**License** means the license granted under clause 2.

**Licensed Varieties** means the varieties listed in Schedule 2.

**Loss** means all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against us).

**PBR** means plant breeder's rights as defined in the PBR Act.

**PBR Act** means the *Plant Breeder's Rights Act 1994* (Cth) as amended from time to time.

**Propagating Material** has the meaning given to it in the PBR Act, namely in relation to a Plant of a particular Plant Variety, means any part or product from which, whether alone or in combination with other parts or products of that Plant, another Plant with the same essential characteristics can be produced.

**Retained Seed** (or **Farm Saved Seed**) means grain retained and used by You for the purpose of producing more grain or fodder as permitted by clause 2(a)(ii).

**Seed** means seed of the Licensed Varieties, but does not include Retained Seed.

**Sell** has the meaning given to it in the PBR Act, namely it includes letting on hire and exchanging by way of barter and **Sale** and **Sold** have equivalent meanings.

**Us/We** as the PBR owner or Authorised Distributor of the Seeds.

**Use** means to plant, grow, Sell, or Consume.

**You** as the person or entity who either purchases, accepts, retains or sows the seed of a PBR variety.

**Business Day** means a day on which Australian banks are open for general banking business in the capital city of the State excluding a Saturday, Sunday or public holiday.

## SCHEDULE 2 – LICENSED VARIETIES AND APPLICABLE END POINT ROYALTIES

SCHEDULE OF PBR VARIETIES			
Plant Varieties owned by Us	EPR Due to Us	Technology fee	Total Royalty Paid by You
	(\$ per tonne, excluding GST)		
AGT Katana Wheat	\$3.00		\$3.00
AGT Scythe Wheat	\$1.50		\$1.50
Anapuma Wheat	\$3.20		\$3.20
Astute Triticale	\$2.75		\$2.75
Axe Wheat	\$2.50		\$2.50
Ballista Wheat	\$3.50		\$3.50
Bandit TT Canola	\$10.00		\$10.00
Beckom Wheat	\$3.25		\$3.25
Bison Triticale	\$2.75		\$2.75
Bitalli Durum	\$3.50		\$3.50
Beast Barley	\$4.00		\$4.00
Boree Wheat	\$3.60		\$3.60
Bremer Wheat	\$3.25		\$3.25
Calibre Wheat	\$3.50		\$3.50
Carinya Wheat	\$2.00		\$2.00
Catapult Wheat	\$3.25		\$3.25
Condo Wheat	\$3.25		\$3.25
Corack Wheat	\$3.00		\$3.00
Coolah Wheat	\$3.50		\$3.50
Coota Wheat	\$3.60		\$3.60
Correll Wheat	\$2.00		\$2.00
Coyote Lupin	\$3.00		\$3.00
Cutlass Wheat	\$3.00		\$3.00
Cyclops Barley	\$4.00		\$4.00
Denison Wheat	\$3.40		\$3.40
Ellison Wheat	\$2.00		\$2.00
Elmore CL Plus Wheat	\$3.00	\$0.55	\$3.55
Espada Wheat	\$2.50		\$2.50
Estoc Wheat	\$3.00		\$3.00
Fusion Triticale	\$3.00		\$3.00
Gladius Wheat	\$2.50		\$2.50
Grenade CL Plus Wheat	\$3.25	\$0.55	\$3.80
Hatchet CL Plus Wheat	\$3.25	\$0.55	\$3.80
Hammer CL Plus Wheat	\$3.70	\$0.55	\$4.25
Hawkeye Triticale	\$2.50		\$2.50
H45 Wheat	\$1.00		\$1.00
Hyperno Durum	\$3.00		\$3.00
Illabo Wheat	\$3.50		\$3.50

SCHEDULE OF PBR VARIETIES			
Jaywick Triticale	\$2.50		\$2.50
Justica CL Plus Wheat	\$3.00	\$0.55	\$3.55
Kiora Wheat	\$3.25		\$3.25
Kord CL Plus Wheat	\$3.00	\$0.55	\$3.55
Lawler Lupin	\$4.00		
Livingston Wheat	\$2.50		\$2.50
Longsword Wheat	\$2.75		\$2.75
Mace Wheat	\$3.00		\$3.00
Marombi Wheat	\$1.00		\$1.00
Merinda Wheat	\$2.50		\$2.50
Minotaur Barley	\$4.00		\$4.00
Mitch Wheat	\$3.25		\$3.25
Naparoo Wheat	\$2.50		\$2.50
Outlaw Canola	\$10.00		\$10.00
Patron Durum	\$4.00		\$4.00
Razor CL Plus Wheat	\$2.75	\$0.55	\$3.30
Renegade TT Canola	\$10.00		\$10.00
Saintly Durum	\$3.00		\$3.00
Scepter Wheat	\$3.25		\$3.25
Shield Wheat	\$3.25		\$3.25
Sting Wheat	\$3.50		\$3.50
Sunblade CL Plus Wheat	\$3.80	\$0.55	\$4.35
Suncentral Wheat	\$3.60		\$3.60
Sunchaser Wheat	\$3.50		\$3.50
Sunflex	\$3.60		\$3.60
Sunguard Wheat	\$3.00		\$3.00
Sunlamb Wheat	\$2.75		\$2.75
Sunmaster Wheat	\$3.60		\$3.60
Sunmate Wheat	\$3.25		\$3.25
Sunmax Wheat	\$3.50		\$3.50
Sunprime Wheat	\$3.50		\$3.50
Suntime Wheat	\$3.50		\$3.50
Suntop Wheat	\$3.25		\$3.25
Sunvex Wheat	\$2.75		\$2.75
Sunzell Wheat	\$2.00		\$2.00
Tjilkuri Durum	\$3.00		\$3.00
Titan AX	\$4.55		\$4.55
Ventura Wheat	\$2.00		\$2.00
Wallup Wheat	\$3.00		\$3.00
Westcourt Durum	\$3.50		\$3.50
Willaura Wheat	\$3.50		\$3.50
Yeti Barley	\$4.00		\$4.00

**SCHEDULE 3 – ADDITIONAL TERMS****1 GENERAL UNDERTAKINGS BY GROWER**

- (a) You acknowledge and agree that:
  - (i) You are not the owner of, and You have no ownership rights, in the Licensed Varieties (or the IPRs in the same);
  - (ii) You have no rights in respect of the Licensed Varieties (or the IPRs in the same) except as expressly granted in clause 2(a).
- (b) You acknowledge and agree that Licensed Varieties are licensed on an ‘as is’ basis and, subject to any express terms of this Agreement, neither We nor any other person makes any warranties, promises representations or assurances in respect of any matter under or in connection with the Licensed Varieties (including in respect of matters relating to suitability for purpose, crop or general safety, prospects, marketability, efficacy, commercialisation, herbicide tolerance or general performance, financial outcome, profits or revenues).
- (c) Notwithstanding clause 3(a), You must not Sell any Grain for use as a Propagating Material without first entering into seed sharing arrangements satisfactory to Us.
- (d) You must not use any Seed or Retained Seed for any purpose other than as permitted by Clause 2(a) including without limitation for any breeding purpose, to create hybrid products, to undertake genetic testing or for DNA finger printing.

**2 INTEREST AND COLLECTION COSTS**

- (a) We may charge interest at a rate equal to the Small Business Variable Small Overdraft Indicator Lending Rate published by the Reserve Bank of Australia from time to time plus 3%, calculated daily, for:
  - (i) any amounts due but unpaid for more than 30 days; and
  - (ii) any amounts found owing that have been shown to be either underpaid, under-estimated or under-calculated in any inspection or audit conducted under clause 8(a)(v).
- (b) You must pay to us on demand all costs we incur in the recovery of monies owing by You to Us or in otherwise enforcing Our rights against You under this Contract (including legal and debt collection costs on a full indemnity basis) including interest hereunder and you indemnify us in respect of the same.

**3 CONTACT DETAILS***Our Details*

Australian Grain Technologies Pty Ltd A.C.N. 100 269 930

PO Box 341, Roseworthy, SA 5371

Phone 08 7111 0201 Fax 08 8311 1747

epr@agtbreeding.com.au

*Your Details*

Contact person and address as provided by You, the Authorised Distributor or EPR Collector in accordance with clause 4(d).

**4 LIMITATION OF LIABILITY**

Pursuant to section 64A of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), this clause applies in respect of the goods or services supplied under this Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption; but this clause will not apply if You establish that reliance on it would not be fair and reasonable.

Liability for breach of a condition or warranty implied into this Agreement by the *Competition and Consumer Act 2010* (Cth) (other than a condition or guarantee implied by section 69) or otherwise is limited:

- (a) in the case of goods, to any one of the following as determined by the seller of the goods:
  - (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the payment of the cost of replacing the goods or acquiring equivalent goods; and
- (b) in the case of services, to any one of the following as determined by the seller of the goods:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

## **5 INFORMATION ABOUT YOU**

We may provide Your Details to any grain accumulator or EPR collector or third party auditor to confirm that You have adhered to Your obligations under clauses 4 and 6 and to assist in the establishment of appropriate storage, segregation and marketing options.

## **6 PRIVACY**

- (a) We have published a Privacy Policy for all users at: <https://www.agtbreeding.com.au/privacy-policy> which shall form part of this Agreement. We collect, hold, use and disclose personal information in accordance with Our Privacy Policy.
- (b) By entering into this Agreement, You provide Your express acknowledgement and consent to the collection, holding, use and disclosure of personal information by Us in accordance with Our Privacy Policy.

## SCHEDULE 4 – CLEARFIELD® WHEAT VARIETIES

- 1 You acknowledge and agree that:
  - (a) BASF Australia Limited and/or its affiliates (collectively, **BASF**) own and/or have rights to (i) the Clearfield® imidazolinone herbicide tolerance trait, which is contained in the Licensed Variety with the suffix “CL Plus” (each, a **Clearfield Variety** and collectively, the **Clearfield® Varieties**), (ii) methods of applying imidazolinone herbicides on the Clearfield® Varieties or to the area where the Clearfield® Varieties are grown, and (iii) Intellectual Property Rights (including patents) relating to such trait and such methods;
  - (b) Under this Contract, We grant You a sublicense under such Intellectual Property Rights of BASF for purposes of Your planting and growing Seed of the Clearfield® Varieties and harvesting the resulting Harvested Material and/or Farm Saved Seed for the limited purposes set out in clause 2.1, including, without limitation, Sale of such Harvested Material (but expressly excluding Sale of Farm Saved Seed as Propagating Material). You are not granted any right or license, express or implied, under this Contract by Us, BASF or any Authorised Distributor under any BASF Intellectual Property Rights to apply an imidazolinone herbicide to any Clearfield® Variety or to the area where any Clearfield® Variety is grown;
  - (c) BASF is an intended third-party beneficiary of this Contract with respect to the Clearfield® Varieties;
  - (d) You must not challenge BASF’s intellectual property rights, including patents, relating to any Clearfield® Variety, including, without limitation, the imidazolinone herbicide tolerance trait contained in any Clearfield® Variety and methods of applying imidazolinone herbicides on any Clearfield® Variety or to the area where any Clearfield® Variety is grown;
  - (e) You must purchase Seed of the Clearfield® Varieties only from Authorised Distributors;
  - (f) You must plant, grow, farm and harvest Seed of the Clearfield® Varieties only in Australia, and You must not plant, grow, farm or harvest in Australia seed (including Seed) of any of the Clearfield® Varieties that You purchased in any other country;
  - (g) You must not use Seed or Harvested Material of any of the Clearfield® Varieties for generation of herbicide registration data;
  - (h) BASF MAKES NO REPRESENTATION OR WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE CLEARFIELD® VARIETIES;
  - (i) You must grant BASF or any person acting on behalf of BASF, during the term of this Contract and for a period of five (5) years thereafter, the right, upon prior reasonable notice, to enter upon property being farmed by You, or any affiliated persons, and to take any samples or conduct any tests reasonably necessary to assure compliance with this Contract; and
  - (j) You must permit BASF or any person acting on behalf of BASF, during the term of this Contract and for a period of five (5) years thereafter, to obtain and review (i) Authorised Distributor invoices for Seed of any of the Clearfield® Varieties and herbicides purchased by or for You; and (ii) records or documents covering or relating to the storage, sale, or transfer of the Harvested Material and/or Farm Saved Seed produced by You from any of the Clearfield® Varieties.
- 2 In the event that You elect to obtain a license to apply imidazolinone herbicide on the Clearfield® Varieties or to the area where such Clearfield® Varieties are grown, then You acknowledge and agree that:
  - (a) You have read and will use reasonable endeavors to abide by the Stewardship Guidelines for Growers, which are available at <https://crop-solutions.basf.com.au/products/intervix>;
  - (b) The Clearfield® Varieties were tested for use in conjunction with BASF Intervix® imidazolinone herbicide. You acknowledge that the use of other herbicides, may greatly increase the risk of outcrossing to, and subsequent imidazolinone resistance in, jointed goatgrass;
  - (c) THE ONLY IMIDAZOLINONE HERBICIDE REGISTERED BY THE AUSTRALIAN PESTICIDES AND VETERINARY MEDICINES AUTHORITY FOR USE ON THE CLEARFIELD® VARIETIES IS INTERVIX® HERBICIDE, AND BASF DOES NOT WARRANT THE CROP SAFETY OR PERFORMANCE OF HERBICIDES OTHER THAN BASF BRANDS.

**SCHEDULE 5 – COAXIUM® BARLEY PRODUCTION SYSTEM**

You acknowledge and agree that:

- 1 CoAXium® is a registered trademark *owned by Albaugh LLC, Vilmorin & Cie SA and Colorado Wheat Research Foundation*;
- 2 Aggressor® is a registered trademark *owned by Albaugh LLC*;
- 3 “AX” is used as the designator for all Licensed Varieties *with CoAXium® herbicide tolerance (HT) technology*;
- 4 HT barley is a patented technology *owned by The University of Adelaide and licensed exclusively to Us*;
- 5 Aggressor® herbicide is the only herbicide registered by the Australian Pesticides and Veterinary Medicines Authority (**APVMA**) for use on the CoAXium® barley;
- 6 We, Albaugh LLC, and Sipcam Pacific Australia Pty Ltd make no representation or warranty, including, without limitation, any warranty of merchantability, fitness for a particular purpose, noninfringement or any other warranty, express or implied, with respect to the performance of the CoAXium® barley varieties and Aggressor® herbicide;
- 7 Completion by You of a stewardship induction to Our satisfaction is a requirement and pre-condition to the licence and use of any CoAXium® barley Licensed Variety with HT technology under this Agreement.