

# RFP Sample License

**SOLE LICENSE for a PLANT VARIETY**

**VARIETY**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

AND

**[COMPANY NAME]**  
(As Licensee)

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[Variety name-type]

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# SOLE LICENSE for a PLANT VARIETY

[Variety name-type]

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Agriculture and Agri-Food

("AAFC")

AND:

[company name]  
a company incorporated pursuant to the laws of [---],  
having its registered office at,[where]  
in the Province of

("Company")

(Note: the Company name that is used in the license should be the same in the corresponding LOI and MTA)

## INTRODUCTION

WHEREAS:

- A. AAFC has developed the ... **Variety** known as [ crop type ];
- B. The **Variety** traits include [ ];
- C. AAFC wishes to make Certified Seed of the **Variety** widely available in sufficient quantities to meet the needs of Canadian agriculture and the agri-food sector;
- D. AAFC conducted a Request for Proposals in [date] seeking a proponent who gave the overall best economic value to Canada in exchange for a sole License for the **Variety**;
- E. The proposal, submitted by the Company, was accepted by AAFC without amendment;

[or:]

... was accepted by AAFC on the following conditions:  
- list the conditions;

[or, in cases where the variety is wheat or barley was funded under the WGRF Agreement:]

... was accepted by AAFC on the following conditions:

As a WGRF funded variety

- the Company cannot apply to have the license territory extended beyond Canada until three (3) years of significant seed sales have occurred in Canada; and
- the sales of the **Variety** cannot be sold in a manner that would require the purchaser to buy other production or input products in order to buy the **Variety**.

F. *[if applicable:]* AAFC and the Company signed a Letter of Intent on (date), appended as Exhibit A (Letter of Intent) and signed a Material Transfer Agreement on (date), appended as Exhibit B (Material Transfer Agreement) to allow the Company access to an initial lot of **Breeder Seed** to facilitate seed production, during license negotiations;

G. The salient elements of the **License**, as taken and negotiated from the Proposal are a sole license, for the **Variety**, for the territories of [country/s], with royalty consideration, and reimbursement of fees for *[as they apply: Variety Registration, Plant Breeders' Right, Plant Variety Protection, CSGA Form 300]*;

H. The **Parties** have incorporated the salient elements of the Company's Proposal and the Letter of Intent into this **License**.

NOW THEREFORE in consideration of the premises, the terms and conditions hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged by each party, the **Parties** hereto covenant and agree as follows:

## 1. DEFINITIONS

### 1.1. "Dispute"

means any disagreement or difference of opinion arising out of the License, including without limitation:

- 1.1.1. any controversy, conflict, or claim, (irrespective of whether it is premised on contract, tort or trust / equity, or other legal basis or principles);
- 1.1.2. any issues concerning the breach, interpretation, rectification, termination, performance, enforcement or validity of the **License**, or the rights and liabilities of the **Parties** in relation to the **License**;
- 1.1.3. irrespective of the fact that there is no arguable defense under the **License**, or that the facts or law are undisputable and subject to judicial summary proceedings;

but **Dispute** does not encompass any controversy, conflict, claim, disagreement or difference of opinion or the rights and liabilities of the **Parties**:

- 1.1.4. under any collateral or antecedent agreements independent of the **License**; or
- 1.1.5. with any emanation of Her Majesty the Queen in Right of Canada, other than Agriculture and Agri-Food Canada.

### 1.2. "Execution Date"



means the date of the last signature to the **License** as noted in Article 17 (Execution).

1.3. "Field of Use" – needs further discussion to include grafting

means the sale of the **Variety** for the end purpose of planting and for no other purposes whatsoever.

1.4. "License"

means this agreement including any amendments and the attached appendices, (but excluding any exhibits which are attached for ease of reference and information purposes only); and refers to the whole of this agreement, not to any particular section or portion thereof.

1.5. "Licensed Rights"

means the **Sale** of **Select, Foundation, Registered** and **Certified Seed** of the **Variety**, as authorized in the **License** and pursuant to the Seeds Act, Plant Breeders' Rights Act, and the U.S. Plant Variety Protection Act, 1970, as they may apply.

1.6. "Party"

means any one of the signatories to the **License** and its respective servants, agents and employees and "**Parties**" means both of them and their respective servants, agents, and employees.

1.7. "PBR"

means Plants Breeders' Rights under the Plant Breeders' Rights Act. (remove if not applicable)

1.8. "Pedigreed, Breeder, Select, Foundation, Registered, and Certified Seed"

have the meanings prescribed in the "Regulations and Procedures for Pedigreed Seed Crop Production", Circular No. 6 of the Canadian Seed Growers' Association (CSGA) in effect as of the date of execution of the **License**. Grade standards for all classes shall be as defined under Schedule A of Regulations made pursuant to the Seeds Act. For countries where these Regulations do not apply, the equivalent terms and definitions used in those countries shall apply. The purity of **Breeder Seed** will be at least equivalent to Foundation No. 1 Seed.

1.9. "PVP"

means Plant Variety Protection under the U.S. Plant Variety Protection Act, 1970. (remove if not applicable)

1.10. "Sale" or "Sell"

means

1.10.1. the planting, reproducing, multiplying, promoting, marketing, distributing, disposing, selling or offering to sell (as "sell" is defined in the Seeds Act); and

1.10.2. within the **Territory** only (without right of export).

1.11. "Sale Price"

means, irrespective of the class of seed being sold, average retail market price of **Certified** seed of the **Variety** as determined by an annual seed price survey conducted by the Company and approved by AAFC.

[*alternate wording:*] means the wholesale price paid by an arm's length purchaser for each class of **Pedigree Seed** of the **Variety** sold by the Company or its sub-licensees. If the wholesale price is less than the fair market value at the wholesale level, then for royalty calculation purposes, the wholesale price shall then be deemed to be fair market value at the wholesale level as determined by the unfettered discretion of AAFC in consultation with a Canadian seed broker. **Sale Price** shall not, in any event, include the cost of freight or any seed treatment.]

1.12. "Taxes"

means taxes (including, without limitation, sales taxes, Goods and Services Taxes, value added taxes, however described), levies, imposts, deductions, charges, license and registration fees, assessments, withholdings / withholding taxes and duties imposed by any jurisdiction or authority (including stamp and transaction taxes and duties) together with any related interest, penalties, fines and expenses in connection with them.

1.13. "Term"

means the period prescribed in Article 3 (Term), including any extensions or renewals.

1.14. "Territory"

means exclusively in the country of [XXX] (or countries of [XXX]) without right of export therefrom, always subject to the

- 1.14.1. United Nations Act, R.S.C. 1985, Chap. U-2;
- 1.14.2. Export & Import Permits Act, R.S.C. 1985, Chap. E-19;
- 1.14.3. Special Economic Measures Act, S.C. 1992, Chap. 17;
- 1.14.4. Foreign Extra-Territorial Measures Act, R.S.C. 1985 c. F-29;

and any other pertinent Canadian statutory or regulatory strictures. For greater clarity **Territory** means the aggregate of the countries and jurisdictions cited and not each country or individual jurisdiction.

1.15. "Variety"

means [name and/or number, ex: AC Calder (TR 262)].

## 2. GRANT & RESERVATIONS

2.1. Grant

Subject to the Company fulfilling the provisions of the **License** and any third party antecedent preemptory rights, AAFC grants to the Company a non-transferable, sole, fixed term, revocable, royalty-bearing license to exercise the **Licensed Rights**, within the **Territory**. Nothing herein shall constitute in any manner whatsoever an assignment or similar transfer of either AAFC's proprietary rights in the **Variety** or those rights forming the basis of the **Licensed Rights**.

2.2. Carve Out

Notwithstanding any other provision of the **License**, AAFC shall retain from the **License** any and all absolute and unfettered rights to the **Variety** necessary for *bona fide* research and development activities related to variety development.

2.3. No Export (for discussion: we need to be clear that no export means no export of seed versus grain)

The Company has no right to export directly or indirectly the **Variety** outside of the **Territory**.

2.4. Sub-Licensing Conditions

The Company is permitted to sub-license to parties that are not affiliates of the Company on not less than the same terms and conditions of this **License**. The terms and conditions of any sub-license granted by the Company shall include but are not limited to the following:

- 2.4.1. be royalty-bearing, revocable, without the right to sub-sub-license;
- 2.4.2. prescribe a royalty rate no less than that prescribed in the **License**;
- 2.4.3. be only within the **Territory** or any portion thereof;
- 2.4.4. be only within the **Field of Use** or a subset thereof;
- 2.4.5. be subject to the same obligations and restrictions as those required of the Company under the **License**;
- 2.4.6. be in a form determined by the Company but approved by AAFC prior to execution;
- 2.4.7. be copied to AAFC immediately following execution; and
- 2.4.8. not be a *de facto* assignment.

For greater clarity AAFC shall receive from the sub-licensees not less than the same amount of consideration AAFC would have received from the Company, had the Company conducted the **Sale** rather than the sub-licensees. The Company shall ensure that any monies owing to AAFC from the sub-licensee is paid to AAFC when due, and the Company shall be liable for any such monies irrespective of whether or not the sub-licensee paid the Company.

2.5. No Sub-Licensee Encumbrances

The Company has no right to encumber any contractual, legal or equitable rights (or other rights recognized at law) that the Company may have against any sub-licensee in favor of any financial institution or any third party whatsoever.

2.6. Termination

Termination of the **License** shall also terminate any subsisting sub-licenses, but any consideration due or owing to AAFC shall be paid promptly thereafter, and any and all unsatisfied obligations and rights shall subsist until satisfied.

2.7. Variety Registration

AAFC shall be responsible for registering the **Variety** through the Variety Registration Office of the Canadian Food Inspection Agency (CFIA) and shall invoice the Company for costs associated with registering the **Variety** in accordance with paragraph 5.1. (Reimbursement for Fees).

**IF THE VARIETY IS EXEMPT FROM BEING REGISTERED, REPLACE THE ABOVE PARAGRAPH WITH THE FOLLOWING AND DELETE 2.8 BELOW:**

The **Variety** is exempt from being registered with CFIA but AAFC, on behalf of (Company), is required to file Form 300-Variety Certification Eligibility Application with the Canadian Seed Growers Association to obtain certification to produce and sell pedigreed seed. AAFC shall be responsible for filing the application form and paying the fee that must be paid at the time of submitting the application. (Company) shall reimburse AAFC for such filing/application costs as per paragraph 5.1 (Reimbursement for Fees) and shall obtain any additional authorizations, permits, certificates or other regulatory permissions which may be required in order for (Company) to legally carry out all of its activities under the **License**, at (Company's) sole cost and expense without right of set-off against royalties or other consideration due AAFC.

2.8. Plant Breeders' Rights

The Company desires that **PBR** be filed for the **Variety**, and;

2.8.1. AAFC shall prepare and submit the necessary applications and shall grow and present plots and data to the **PBR** offices as required; and

2.8.2. AAFC shall invoice the Company for costs associated with protecting the variety under **PBR** in accordance with paragraph 5.1 (Reimbursement for Fees).

2.9. The Company Shall Obtain Regulatory Permissions

The Company shall obtain any registrations, authorizations, permits, certificates or other regulatory permissions which may be required in order for the Company to legally carry out all of its activities under the **License**, at the Company's sole cost and expense without right of set-off against royalties or other consideration due AAFC.

2.10. Her Majesty Not Obligated

Nothing in the **License** shall obligate any emanation of Her Majesty the Queen in Right of Canada to grant any required authorizations, permits, certificates or other regulatory permissions. Conversely there is no implication by the execution of the **License** that the

Company will be granted any required authorization, permits, certificates or other regulatory permissions necessary for the exercise of the **Licensed Rights**.

### 3. TERM

#### 3.1. Initial Term

The **License** shall remain in force for eight (8) years from the **Execution Date**, unless terminated pursuant to the provisions of Article 12 (Termination).

#### 3.2. Renewal of License

The **License** shall be automatically renewed for two (2) additional five (5) year terms on the same terms and conditions (excepting renewal) contained herein unless:

- 3.2.1. the Company is in breach of the **License** and does not remedy such breach as permitted under paragraph 12.1 (By AAFC for Cause); or
- 3.2.2. either **Party** provides sixty (60) days notice as per Article 16 (Notice) prior to the date of expiration, of that **Party's** unconditional intention to withdraw from the **License**.

### 4. EXPLOITATION OF THE VARIETY

#### 4.1. Efforts to Sell

The Company shall use reasonable commercial efforts to **Sell** the seed created by exercising the **Licensed Rights** to the end-users and sub-licensees. This obligation includes the twin duties of filling demand and creating demand for the seed created by exercising the **Licensed Rights**. Nothing in the **License** authorizes the "shelving", deferral of, or otherwise enfeebled sales efforts or other activities that neither create demand nor fill demand for the seed created by exercising the **Licensed Rights**, and any such activities are a material breach of the **License**.

#### 4.2. Variety Name

AAFC retains the right to name the **Variety**.

#### 4.3. Use of the Prefix "AC"

The Company shall market and advertise the **Variety** under the **Variety's** approved registered denomination in association with the official mark "AC". The Company shall ensure that the denomination name remains easily recognizable, and cannot be construed as a brand name.

##### 4.3.1. NOTICE THAT "AC" UNDER LICENSE

The Company shall give a trade mark notice on any material using the "AC" mark and where practical, that trade mark notice shall have a footnote saying the mark is used under license and with the permission of AAFC (i.e. "AC" is an official mark used under license from Agriculture and Agri-Food Canada).

#### 4.3.2. STANDARDS FOR USE OF "AC"

The Company acknowledges that it is of fundamental importance to AAFC that the Company maintains the integrity of the official mark "AC" to a level deemed appropriate by AAFC in Her unfettered discretion. The Company shall scrupulously follow any specifications and policies issued by AAFC concerning the use of "AC". Unless otherwise stated in writing by AAFC, the Company shall ensure that:

4.3.2.1. the font (both size and type), effects and any other graphic devices used to print "AC" shall be the same font, effects and graphic devices as those used in printing the denomination or variety name. Notwithstanding the foregoing, if the Company has a proposal that technically breaches this provision but is in compliance with regulatory strictures, AAFC will entertain approving the proposed presentation, but the Company shall not use or test such presentation without AAFC's prior written consent;

4.3.2.2. "AC", including the trade mark, official mark, or registered mark, shall not be more than approximately two letter spaces distance from the denomination or variety name and always on the same plane; and

4.3.2.3. "AC" shall have to its immediate right top quadrant any of the initials "OM" (for Official Mark); "TM" (for Trade-mark) "R" (or Registered mark) or a graphic symbol such as an asterisk (\*) in a font at least 40% smaller than that used to print "AC" (i.e. AC<sup>TM</sup>) which initials or symbols may also be encompassed in a circle (i.e. AC<sup>®</sup>). The initials or symbols, as the case may be, shall act at the footnote notice for the footnote prescribed in sub-paragraph 4.3.1.

#### 4.3.3. NON EXCLUSIVE RIGHTS

The Company acknowledges that any rights to the "AC" mark under the **License** are non-exclusive, and solely for use in association with the **Variety** as prescribed in the **License**.

#### 4.3.4. COMPANY HAS NO RIGHTS TO AC - ESTOPPEL

The Company further acknowledges that it has no rights, title or interest in or to the official mark "AC" or any part thereof, except the use of the same as herein set out. Nothing in the **License** shall be construed as an assignment or grant to the Company of any right, title or interest in or to "AC". The Company shall not directly or indirectly, at any time assert the invalidity of the official mark "AC" or any part thereof, or contest AAFC's ownership of or right in or to "AC" or any part thereof.

#### 4.4. Quality Control

The Company shall abide by the quality control terms prescribed in Article 6 (Records, Quality Control, Audit).

### 5. FEES & ROYALTIES

#### 5.1. Reimbursement for Fees

The Company shall reimburse AAFC within thirty (30) days of receipt of an invoice for:

5.1.1 all third party and registration fees incurred by AAFC, whether incurred before the **Execution Date** or during the **Term** of the **License** ; and (if applicable)

5.1.2 all costs incurred by AAFC for securing or maintaining **PBR, PVP**, patent or any other statutory protections for the Variety, whether incurred before the **Execution Date** or during the **Term** of the **License**. AAFC shall notify the Company promptly of communications between AAFC and regulatory authorities about statutory protections relevant to the **License**.

5.2. Royalty

The Company shall pay to AAFC the cumulative consideration prescribed for all sales of the **Variety** sold or used for planting purposes by the Company and its sub-licensees or nominees. This consideration shall be a royalty of

(i) [ ] % of the **Sale Price** for all sales of **Certified Seed** of the **Variety**, exclusive of all applicable taxes, levies and fees, by either the Company or its sub-licensees.

(ii) or if based on flat rate: This consideration shall be a royalty of \$/tonne on all sales of **Foundation, Registered, and Certified Seed** of the **Variety**, exclusive of all applicable taxes, levies and fees, that is sold or used for planting purposes under the **License**, by either the Company or its sub-licensees or nominees.

5.3. Execution Royalty

Within thirty (30) days of AAFC receiving notice of Variety Registration and providing a copy of such notice to the Company or the **Execution Date**, whichever is the latter, the Company shall pay to AAFC the one time sum of **[\$ XXX ]**.

5.4. Seed Transfer Fee

Within thirty (30) days of receipt of invoice from AAFC, the Company shall submit payment to AAFC at the address given in sub-paragraph 5.8.2 (Currency & Address) for the initial lot of **Breeder Seed** provided to the Company by AAFC as prescribed in paragraph 7.1 (Provision of Seed) The payment shall be established by AAFC using its cost schedule in force at the time of seed transfer.

5.5. Sub-Licensee Consideration

The Company shall pay to AAFC fifteen percent (15%) of all consideration paid by the sub-licensee to the Company as a condition to being granted a sub-license, whether or not such consideration was directly, indirectly or derivatively paid or provided, including without limitation, any equity.

5.6. Sub-Licensee's Royalties

The Company shall ensure that royalties payable to AAFC from sub-licensees shall be remitted directly to the RECEIVER GENERAL FOR CANADA, at the address provided in sub-paragraph 5.8.2 (Currency & Address). The Company shall take any necessary actions (at the Company's cost) to collect, enforce and remit royalties or other consideration owing to AAFC by the sub-licensees. If a licensee has royalties or other consideration owing to AAFC under a sub-license for a period in excess of thirty (30) days, then the

Company shall pay to AAFC that amount owing within the next fourteen (14) days immediately following the aforementioned thirty (30) days.

5.7. Taxes

The Company shall pay **Taxes** at the applicable prevailing rates exigible on the Company's activities under the **License**, including on any sales of **Certified Seed** or on the payment of royalties.

5.8. Payment to AAFC

The Company shall pay any monies and consideration owing to AAFC as follows:

5.8.1. TIME & MODE

Royalties and other consideration with respect to sales of the **Variety** effected during the (12) months preceding the 30<sup>th</sup> day of June of each calendar year, shall be paid by the Company to AAFC by the 31<sup>st</sup> day of December of that calendar year..

5.8.2. CURRENCY & ADDRESS

Cheques for the payment of royalties and other consideration shall be in Canadian funds and made payable to the "RECEIVER GENERAL FOR CANADA". Where royalties generated by sales are in US funds, cheques for the payment of royalties shall be in Canadian funds converted from US funds at the conversion rate stated in the Wall Street Journal on the day the payment is due. The cheques shall be sent to:

Agriculture and Agri-Food Canada  
Revenue Management Unit  
960 Carling Avenue  
Building 74, Rm 206  
OTTAWA ON K1A 0C5

5.8.3. ACCOMPANYING DOCUMENTATION

Each cheque shall be accompanied by written reports as specified in paragraph 6.1 (Reports & Records).

5.9. Payments to AAFC after Termination

The Company shall pay to AAFC any consideration due and payable under the **License** or sub-licenses whether incurred prior to termination or after, in accordance with Article 12 (Termination).

5.10. No Set-off

Notwithstanding any other provision of the **License**, any consideration payable to AAFC by the Company under the **License** is unconditional and cannot be canceled. Further, the Company shall not have the right of set-off, deduct or counter-claim against any such consideration.



## 6. RECORDS, QUALITY CONTROL & AUDIT

### 6.1. Reports & Records

The Company shall on or before the 31<sup>st</sup> day of December of each calendar year during the **Term**, submit to AAFC's contact person identified in paragraph 16.1 (Addresses/Contacts), written reports as to the Company's activities with respect to the **Variety** during the twelve (12) months period preceding the 30<sup>th</sup> day of November. Such reports shall contain:

#### 6.1.1. MARKETING EFFORTS & PRODUCTION

if requested by AAFC acting reasonably, a detailed description of the steps taken by the Company to **Sell** the **Variety** which description shall have separate entries for seed multiplication or production, indicating the quantities of seed produced in each seed class, making an estimate when precise figures are not available, marketing, sub-licensing and sales;

#### 6.1.2. MARKETING CONDITIONS

if requested by AAFC acting reasonably, a description of the marketing conditions for the **Variety**,

#### 6.1.3. TONNAGE SOLD / PLANTED & CONSIDERATION PAYABLE

a statement bearing the Financial Coding of this **License** and the **Variety**, showing the period covered, the total the tonnage of the seed (created by exercising the **Licensed Rights**) sold or used for planting purposes by the Company and its sub-licensees (if applicable), per country sales, the per country royalty applicable and a summary of the total amount of royalties paid or consideration paid in accordance with paragraph 5.2 (Royalty) as applicable, and;

#### 6.1.4. SUB-LICENSE(S) DETAILS

a statement including the names and addresses of all sub-licensees to whom the **Variety** has been sub-licensed, a full account of all revenues generated by such sub-licenses, including the number of tonnes of seed (created by exercising the **Licensed Rights**) sold, and a calculation of the amount due to AAFC for the consideration stipulated therein.

### 6.2. Canadian Seed Growers' Association Records

AAFC authorizes the Canadian Seed Growers' Association (and any similar organization or institution in other countries as identified by the Company) to disclose to the Company any information it might have with respect to the production of the **Variety** in the **Territory** by the Company, including acreage planted.

6.2.1. AAFC shall inform the said Association of this contractual obligation upon the written request of the Company.

6.2.2. The Company shall provide all information with respect to the production of the **Variety** in the **Territory**, including acreage planted, received from the Canadian Seed Growers' Association, to AAFC, upon the written request of AAFC.

6.2.3. The Company shall ensure that its representatives, contractors, sub-contractors or members (as the case may be) make a full and frank disclosure to the Canadian Seed Growers' Association of all information normally kept by or requested by the Canadian Seed Growers' Association.

All costs associated with such disclosure are the responsibility of the Company and shall be paid forthwith by the Company, whether the Company is invoiced by the Canadian Seed Growers' Association (and any similar organization or institution in other countries) or AAFC.

### 6.3. Quality Control Obligations

The Company shall comply with all quality requirements for the seed created exercising the **Licensed Rights**, the seed itself, and the **Sale** of the seed that are prescribed by:

6.3.1. the Canadian Seed Growers' Association; and

6.3.2. any regulatory or statutory authority.

In case of conflict, the higher standard prevails.

### 6.4. Quality Control Audits

AAFC shall have the right, exercised at all reasonable times during regular business hours on five (5) days prior written notice to the Company, and at its own cost, to inspect the seed created exercising the **Licensed Rights** within the **Territory** to ensure the seed created exercising the **Licensed Rights** satisfies all quality control obligations prescribed under paragraph 6.3 (Quality Control Obligations).

6.4.1. The Company shall release any CFIA or equivalent reports on seed quality to AAFC immediately upon the written request of AAFC.

6.4.2. The Company shall ensure that this provision is incorporated in any sub-license and brought to the attention of the sub-licensee.

### 6.5. Material Terms

The reporting requirements given in paragraph 6.1 (Reports & Records) and the quality control requirements given in paragraphs 6.3 (Quality Control Obligations) and 6.4 (Quality Control Audits) are material terms of this **License**.

### 6.6. Reports and Records Audit Rights

AAFC shall have the right, exercised at all reasonable times during regular business hours, on five (5) days prior written notice to the Company, and at its own cost, to conduct an audit of the Company's records concerning the **Sale** of the Variety, and to make copies of all such records. Upon the written request of AAFC, the Company shall permit an independent public accountant, retained by AAFC at its own cost subject to

paragraph 6.9 (Discrepancy Percentage), to inspect all relevant records. The audit shall focus on the Company's payment of royalties or consideration paid to AAFC and the accuracy of any reports previously submitted to AAFC as detailed in paragraph 6.1 (Reports & Records). This right shall survive for twelve (12) months immediately following termination or expiration of the **License**.

6.7. Audit Confidentiality

The independent public accountant retained by AAFC shall inform AAFC whether or not the Company has complied with its obligations under the **License** to submit reports and to pay royalties and consideration due and payable to AAFC. Subject to the information contained in the foregoing audit reports, the independent public accountant shall not reveal to AAFC any of the Company's internal documentation or records.

6.8. No Waiver

Any royalty payment or report accepted by AAFC shall not constitute a waiver by or estoppel against AAFC concerning the contractual right to audit the Company, and AAFC shall continue to have the right to audit as prescribed in the **License**. Furthermore, an audit shall not preclude AAFC from conducting any subsequent audit or audits or other matters provided in this **License**.

6.9. Discrepancy Percentage

In the event of any discrepancy uncovered by the audit:

- 6.9.1. the Company shall pay forthwith to AAFC the discrepancy; or
- 6.9.2. if the discrepancy is equal to or greater than seven thousand five hundred dollars Canadian (\$7,500 CDN) the Company shall pay forthwith to AAFC the discrepancy and the cost of the audit (such audit costs will be commercially reasonable); or
- 6.9.3. if the Company submits more royalties than required, these overpayments shall be paid forthwith to the Company.

## 7. VARIETY – SEED SUPPLY

7.1. Provisions of Seed

AAFC shall provide to the Company an initial amount of **Breeder Seed** at a cost to the Company as provided in paragraph 5.4 (Seed Transfer Fee). Where **PBR** is applicable, the initial lot of **Breeder Seed** of the **Variety** shall be supplied to the Company following filing of **PBR** by AAFC.

AAFC shall:

- 7.1.1. provide the Company, at its request, with further quantities of **Breeder Seed** and other classes of **Pedigreed Seed** that may be available at a fee established by AAFC and that is payable within thirty (30) days of receipt of invoice;
- 7.1.2. maintain a supply of **Breeder Seed** of the **Variety** for the **Term**;

- 7.1.3. provide the Company, from time to time, with new **Breeder Seed** or other classes of **Pedigreed Seed** of the **Variety** that may be available for a fee established by AAFC; and
- 7.1.4. make the **Breeder Seed** available at a location as may be designated by AAFC. The Company shall obtain the **Breeder Seed** promptly upon notification by AAFC of the location of the **Breeder Seed**. If the Company wants AAFC to deliver the **Breeder Seed** to the Company's premises, then AAFC shall do so at the Company's expense and at the Company's risk.

## 7.2. Use of Seed

The Company shall only use the seed received from AAFC for the production of **Foundation, Select, Registered, or Certified Seed**. It shall not assign, sell, give, or in any manner whatsoever dispose of any of the **Pedigreed Seed** of the **Variety** received from AAFC or produced from seed supplied by AAFC without the written permission of AAFC except as provided in the **License**.

## 7.3. Seed for Research & Development

The Company shall provide AAFC or Her designate, on or about the 1<sup>st</sup> day of March of each calendar year of the **Term**, effective the second year of the **License**, upon AAFC's request and at no cost to AAFC, up to one hundred (100) kilograms of **Certified Seed** or higher quality untreated seed for *bona fide* research and development purposes only, subject to availability of **Certified Seed**.

## 7.4. Seed for Provincial Adaptation Trials

The Company shall be responsible for entering the **Variety** in the provincial adaptation trials for the time period deemed necessary by the respective provincial committee and for paying the entry fees, and agrees to provide **Seed** for adaptation trials to authorized provincial variety testing agencies, upon agency request and subject to the availability of suitable **Seed**.

## 7.5. Improvements

Any improvements of any kind or manner whatsoever, including without limitation, reselection, derivative, clonal variant or gene insertion but excluding essentially derived varieties of the **Variety**, may be the subject of a separate license, if AAFC decides to license the improved **Variety** or derivative, in AAFC's unfettered discretion. For greater clarity, ownership of all improvements in the **Variety** or derived from the **Variety** vests in AAFC.

# 8. DISCLAIMERS

## 8.1. Company's Rights

The Company shall have no rights in the **Variety** except as expressly granted in this **License**.

## 8.2. No Impeachment

- 8.2.1. The Company shall not impeach or otherwise attack, directly or indirectly, AAFC's statutory, regulatory or proprietary rights in the **Variety** nor assist any third party to do so.
- 8.2.2. The Company shall not apply for any patent or **PBR** or other right and shall not divulge or disclose, without the prior written consent of AAFC, any information, material or documents concerning same or make available in any way or use the **Variety** except as expressly provided in this **License**, or required by law.

8.3. Disclaimer of Express / Implied Warranties

Except as provided in paragraph 9.2 (AAFC Authorized) or otherwise expressly stated in this **License** or in Appendix "A" (Variety Description), AAFC makes no warranties, representations or conditions, express or implied, of any nature, and AAFC disclaims all warranties, representations or conditions, for the **Variety** regarding:

- 8.3.1. merchantability;
- 8.3.2. quality;
- 8.3.3. fitness for any or a particular purpose;
- 8.3.4. commercial utility or practical purpose;
- 8.3.5. susceptibility of yielding valuable results or results are free of defects or otherwise harmless;
- 8.3.6. latent or other defects;
- 8.3.7. infringement or non-infringement of **PBR**, patent or other third party rights;
- 8.3.8. conformity with the laws of any jurisdictions outside of AAFC; or
- 8.3.9. fitness for the Company's corporate objectives (whether or not expressly or impliedly communicated to AAFC).

For greater certainty, no information or advice given by AAFC shall create a warranty or representation or condition other than as expressly stated in the **License**. The Company accepts the **Variety** "as is", with all faults, and the entire risk as to satisfactory quality, performance, accuracy and effort is with the Company other than as expressly stated in this **License**.

8.4. Disclaimer of Statutorily Implied Warranties

No legal or equitable warranties or conditions implied by law or convention under any domestic, foreign or international legal regime, or from a course of dealing or usage of trade, shall apply to the **License**. The Company acknowledges this disclaimer and is estopped from relying on any such representations, warranties or conditions against AAFC.

8.5. No Liability to AAFC from Exercise of Rights

The Company agrees that it is responsible for the manner in which it **Sells** the seed created in exercising the **Licensed Rights**. The Company will have no recourse against AAFC with respect to any consequences of such action, except where allowed in this **License**.

#### 8.6. Disclosure & Due Diligence

The Company acknowledges that:

- 8.6.1. AAFC has made full and frank disclosure of all facts the Company deemed relevant before executing the **License**;
- 8.6.2. The Company has conducted a due diligence search of all matters relevant to the **Variety** and the **License**; and
- 8.6.3. AAFC has, to the best of its knowledge, identified the significant characteristics of the **Variety** and that AAFC makes no representation that all the characteristics both favorable and unfavorable have been identified.

### 9. CORPORATE REPRESENTATIONS & WARRANTIES

#### 9.1. The Company Incorporated & Authorized & Bound

The Company represents and warrants to AAFC that as of the **Execution Date**:

##### 9.1.1. ABILITY

it has the legal capacity to **Sell** the seed created in exercising the **Licensed Rights**, and the Company has the necessary access to funds, resources, knowledge, facilities and personnel to perform its obligations under the **License**, subject to all applicable laws;

##### 9.1.2. AUTHORIZATION

it is authorized and has the corporate power and authority to negotiate, execute, comply with and satisfy its obligations, without qualification, under the **License**;

##### 9.1.3. INCORPORATION JURISDICTION

it has been duly incorporated and organized under the laws of AAFC, and is validly existing under the laws of AAFC;

##### 9.1.4. REGISTRATION

it is duly qualified, licensed or registered to carry on business in the **Territory**;

##### 9.1.5. ENFORCEABLE

it is bound by the **License**, upon execution, and the **License** constitutes a legal, valid and binding obligation on the Company, enforceable against the Company in accordance

with the terms of the **License**, except as those terms may be limited by applicable bankruptcy laws and general principles of equity;

#### 9.1.6. LITIGATION

to the best of the knowledge of the Company, there is no legal proceeding or order pending against or, threatened against or, affecting the Company or any of its properties or otherwise that could restrict or have a materially adverse affect on the ability of the Company to consummate fully the transactions contemplated by this **License**, or that in any manner draws into question the validity of this **License**;

#### 9.1.7. VERACITY OF STATEMENTS

no representation or warranty by the Company contained in this **License** and no statement contained in any certificate, schedule or other instrument furnished to AAFC pursuant hereto or in connection with the transactions contemplated hereby, contains any intentional untrue statement of a material fact or intentional omission of a material fact;

#### 9.1.8. INCONSISTENT AGREEMENTS / OBLIGATIONS

it has not given any understanding, express or implied, to any third party which would:

- 9.1.8.1. preclude the Company from fulfilling its obligations under the **License** or
- 9.1.8.2. cause the Company to breach an agreement with a third party;

#### 9.1.9. NO MARCH IN RIGHTS

it is not subject to any "march in" or third party rights, (contractual or statutory, contingent or vested) which would give that third party any rights to the **Licensed Rights** not otherwise explicitly described in the **License**; and

#### 9.1.10. NO BREACH OF THIRD PARTY AGREEMENTS

to the best of its knowledge, its execution of the **License** does not contravene its constituent documents or any law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or the powers of its directors to be exceeded.

### 9.2. AAFC Authorized

AAFC represents and warrants to the Company as of the **Execution Date**:

#### 9.2.1. AUTHORIZATION

AAFC has the power and authority to negotiate, execute and comply with the **License**, subject to all applicable laws and the royal prerogative and

- 9.2.1.1. no further action is required by or in respect of any governmental or regulatory authority;

9.2.1.2. to the best of AAFC's knowledge, the **License** does not contravene, violate or constitute a breach or default under any requirement of law applicable to AAFC or any contract to which AAFC is bound is or is subject to; and

9.2.1.3. the **License** is a legal, valid and binding obligation on AAFC and enforceable against AAFC in accordance with its terms.

#### 9.2.2. AAFC'S RIGHTS TO GRANT THE LICENSE

AAFC is the sole owner of the **Variety** and has the right to grant the **License**.

#### 9.2.3. AAFC OWNS THE VARIETY & ASSOCIATED RIGHTS

The **Variety**, its creation, discovery, development and every matter relating thereto, forming part thereof and arising therefrom are vested in and are the sole property of AAFC. Ownership and all rights to, related to, connected with or arising out of the Variety, including without limitation patent rights and copyright in and the right to produce and publish or cause to be produced and published all information, material and documents, are the sole property of AAFC.

## 10. INDEMNITY, INSURANCE, LIABILITY ALLOCATION & CAPS

### 10.1. The Company's Indemnification

The Company shall:

10.1.1. indemnify;

10.1.2. save harmless, and

10.1.3. defend at its own costs

AAFC (including in this Article 10, Her employees, servants, agent and advisors);

10.1.4. from and against all claims, demands, losses, penalties, damages, costs, (including reasonable legal fees and disbursements), actions, suits or other proceedings;

10.1.5. brought or prosecuted in any manner which heretofore or hereafter may be made by whomever against AAFC;

10.1.6. however and whenever arising out of, relating to, occasioned by or attributed to, any misrepresentations or breach of warranty made in this **License** or any failure to perform its obligations under this **License** by the Company (including in this Article 10, its employees, servants, agents, advisors or sub-licensees) whether by reason of negligence or otherwise.

### 10.2. Indemnity Separate / Continuing



The foregoing indemnity is a continuing obligation, separate and independent from the other obligations of the Company and survives termination of, expiration of, or the acceptance of repudiation of the **License**. It is not necessary for AAFC to incur expense or make payment before enforcing a right of indemnity conferred hereunder.

#### 10.3. Insurance

The Company shall ensure that both the Company and each of its sub-licensees shall obtain and maintain, throughout the **Term** of the **License** or duration of the sub-licenses (as the case may be), commercial general liability insurance of not less than one million dollars Canadian (\$1,000,000 CDN) per incident for any and all claims, actions, liabilities and expenses resulting from the seed created exercising the **Licensed Rights**, including but not limited to product liability.

#### 10.4. AAFC's Indemnity

AAFC shall indemnify, save harmless and defend at its own costs the Company (including in this Article 10, its employees, servants and agents) for damages to property or death of or injury to any person caused sustained or incurred due to the negligence of AAFC. Notwithstanding the foregoing, AAFC shall not be required to indemnify the Company hereunder to the extent arising out of or which would not have arisen but for:

- 10.4.1. the negligence, fraud or willful misconduct on the part of the Company, its employees, servants or agents;
- 10.4.2. a breach by the Company of its obligations, representations and warranties hereunder; or
- 10.4.3. an unauthorized assignment by the Company of the **License**.

#### 10.5. AAFC's Liability Cap

AAFC's liability for:

- 10.5.1. breach of the representations, conditions or warranties contained herein or any of the other provisions of the **License** or any other breach giving rise to liability, including a breach of a condition or fundamental term or fundamental breach or breaches; or
- 10.5.2. in any other way arising out of or related to the **License**; or
- 10.5.3. for any cause of action whatsoever and regardless of the form of action including breach of contract, trust, strict liability, tort (including negligence and misrepresentation), or any other legal or equitable theory;

shall be limited to the Company's actual direct (immediate and foreseeable at the time of negotiation to both **Parties**), provable damages in an amount not to exceed in the aggregate a sum equal to or less than the net consideration received by AAFC from the Company under Article 5 (Fees & Royalties) for the time period commencing from the **Execution Date** up to and including the date of judicial judgment or arbitrator's decision.

## 10.6. Excluded Heads of Damage

AAFC shall not be liable to the Company, its successors, assigns, or sub-licenses for damages in respect of:

10.6.1. incidental, indirect, special, punitive, exemplary damages;

10.6.2. any economic loss, consequential damages, relational loss, including but not limited to lost business revenue, lost profits, business interruption, failure to realize expected savings, loss of data, loss of business opportunity suffered by the Company or any claim whatsoever and whenever made against the Company by any other party;

whether grounded in tort (including negligence), strict liability, contract, trust or otherwise, even if:

10.6.3. AAFC was advised of the possibility of such damages, or

10.6.4. the damages encompassed by sub-paragraphs 10.6.1 and 10.6.2 were foreseeable by AAFC, or

10.6.5. such damages resulted from a fundamental breach of the **License**.

Further, AAFC shall have no duty to warn the Company for matters arising directly or indirectly under the **License**.

## 10.7. No Actions Against Employees

The Company acknowledges and is estopped (prevented) from and waives any rights the Company might have to commence and prosecute any action whatsoever, regardless of form or grounds (including without limitation negligence, misrepresentation, fiduciary, deceit) against any of AAFC's employees, servants, agents or officers, arising out of any claimed breach of the **License** or transactions under the **License** or negotiations leading to the **License**, or in any other way related to the **License**. For greater clarity, the Company's remedies for any breach of or **Dispute** under the **License**, lies only against AAFC, and only within the aforementioned parameters prescribed by the **License**.

## 10.8. Notifications

The indemnified party shall notify the indemnifying party of any claim that falls within the parameters of the respective indemnification obligations as soon as practical. In any case such notice shall be made forthwith upon notice that a claim may be prosecuted or a cause of action exists.

# 11. INFRINGEMENT

**(NOT APPLICABLE IF NO PBR)**

## 11.1. Third Party Suit

Subject to Article 10 (Indemnity, Insurance, Liability Allocations & Caps), AAFC authorizes the Company to pursue any third party infringing the **License Rights** granted to the Company under the Plant Breeders' Rights Act or the U.S. Plant Variety Protection Act, 1970, or any other applicable legislation. In the event of any threatened or actual

suit against the Company in consequence of the exercise right and the **License** granted herein, the Company shall promptly inform AAFC and the **Parties** will jointly decide on the steps to be taken in the circumstances.

#### 11.2. Infringement Uncovered

Each **Party** will notify the other promptly in writing when any infringement is uncovered or suspected.

#### 11.3. Company May Sue

The Company shall have the right to enforce the **PBR** or **PVP** against any infringement or alleged infringement thereof, and shall at all times keep AAFC informed as to the status thereof. Subject to AAFC's prior written approval (which will not be unreasonably withheld), the Company may, at its own expense, institute suit against any such infringer or alleged infringer and prosecute such suit in a manner consistent with the terms and conditions hereof. AAFC shall reasonably cooperate in any such litigation at Company's expense, and Company shall keep AAFC apprised in a timely manner of all litigation activities. In any litigation under this Article, the Company shall not have the right to settle or otherwise compromise AAFC's position as a licensor or owner of the **PBR** without AAFC's prior written consent.

#### 11.4. Distribution of Company's Recovery

In the event of a recovery by the Company of compensatory damages (i.e. non-punitive damages net of legal fees and out of pocket costs of the action) under paragraph 5.2 (Royalty) for a royalty-bearing seed created exercising the **Licensed Rights**, the Company shall pay to AAFC the applicable royalty rate on infringing sales. Infringing sales shall be determined by, and calculated from, the amount of infringing sales on which the award of compensatory damages is based. With respect to any recovery of punitive damages, the Company shall pay to AAFC an amount equal to fifteen percent (15%) thereof.

#### 11.5. AAFC May Sue

If the Company elects not to enforce the **PBR** or **PVP** rights, then the Company shall so notify AAFC in writing within six (6) months of receiving notice that an infringement exists, and AAFC may, in its sole judgment and at its own expense, take steps to enforce its **PBR** or **PVP** and related rights, settle, and defend such suit in a manner as AAFC deems fits, even if such settlement might compromise viability of the **License**, and recover for its own account any damages, awards, or settlements resulting therefrom.

#### 11.6. Thresholds

The **Parties** acknowledge that the mere fact of an infringement in a jurisdiction is insufficient to merit enforcement proceedings, unless such infringement in a material and in a significant way negatively affects **Sales**, and the evidence of the infringement is compelling, probative, and ethically gathered.

## 12. TERMINATION

#### 12.1. By AAFC for Cause

The **License**, at the option of AAFC, without prejudice to any other rights in law or equity or any other legal basis or principles held by AAFC (including any right of indemnity), may be terminated forthwith by AAFC without compensation to the Company if:

#### 12.1.1. COMMERCIAL EFFORTS

the Company fails to use reasonable commercial efforts to **Sell** the seed created exercising the **Licensed Rights**;

#### 12.1.2. NO PAYMENT

the Company fails to make any payment provided for herein and does not make such payment within sixty (60) days of the due date irrespective of whether or not a reminder or other notification was send to the Company;

#### 12.1.3. QUALITY CONTROL & AUDIT

the Company refuses, neglects or fails to meet quality standards or allow access for quality audit purposes contrary to Article 6 (Records, Quality Control, Audit); or provide or allow the audit of the reports and records as required under Article 6 (Records, Quality Control, Audit) and does not remedy the breach within sixty (60) days after being required in writing to do so by AAFC;

#### 12.1.4. CEASES BUSINESS

the Company ceases to actively carry on business;

#### 12.1.5. MULTIPLE BREACHES

the Company breaches three (3) or more provisions of the **License** within any consecutive twelve (12) month period, notwithstanding that such breaches were subsequently cured;

#### 12.1.6. CRIMINAL CONVICTION

the Company was convicted of a criminal or regulatory offence, the nature of which directly or indirectly affects the ability of the Company to conduct itself under the **License**, or to **Sell** the seed created exercising the **Licensed Rights** in an effective and timely manner, or otherwise prejudices **Sales**;

#### 12.1.7. GENERAL BREACH

the Company commits or permits a material breach of any of the other terms and conditions herein contained and does not remedy such breach within sixty (60) days after being required in writing to do so by AAFC;

#### 12.1.8. REPUDIATES

the Company expressly or implicitly repudiates the **License** by refusing or threatening to refuse to comply with any of the provisions of the **License**;

#### 12.1.9. AGGREGATE ROYALTY QUANTUM

the Company has not paid in the aggregate any royalties for three (3) consecutive years; and

#### 12.1.10. IMPROPER USE OF "AC"

the Company breaches any of its obligations pertaining to the use or presentation of the prefix "AC" as prescribed in paragraph 4.3 (Use of the Prefix "AC").

### 12.2. Automatic Termination

The **License** and all rights granted to the Company pursuant to the **License** shall immediately terminate and revert to AAFC by operation of contract, without prejudice to any other rights in law or equity or any other legal basis or principles held by AAFC (including any right of indemnity) and without compensation to the Company, effective the business day prior to the applicable triggering event, namely if:

#### 12.2.1. ASSIGNMENT

the Company assigns the **License** without the prior written consent of AAFC, contrary to the provisions of paragraph 14.3 (Mode of Assignment/ Approval Conditions); or

#### 12.2.2. BANKRUPTCY

The Company becomes bankrupt or insolvent or otherwise

- 12.2.2.1. has a receiving or winding up order made or sought against it
- 12.2.2.2. has a meeting proposed or convened, seeking or actually passing a resolution to appoint a trustee or official manager
- 12.2.2.3. has a receiver, receiver-manager, liquidator, trustee in bankruptcy, custodian or any other officer with similar powers appointed for the Company or such an order is sought;
- 12.2.2.4. has any or all of its assets seized or otherwise attached for the benefit of creditors;
- 12.2.2.5. proposes or convenes a meeting to seek or passes a resolution for winding up;
- 12.2.2.6. takes the benefit of any statute, at the time in force, relating to bankrupt or insolvent debtors for the orderly payment of debts;

- 12.2.2.7. makes a general assignment for the benefit of creditors;
- 12.2.2.8. submits a proposal or arrangement under any debtor/creditor legislation;
- 12.2.2.9. is the subject of a petition or files an assignment under Bankruptcy and Insolvency Act or any successor legislation; or
- 12.2.2.10. does or attempts anything analogous to the aforementioned events or having a substantially similar effect to any of the aforementioned events under the laws of any jurisdiction.

### 12.3. Termination Not A Penalty

The Company acknowledges and is estopped (prevented) from alleging otherwise, that the termination provisions in paragraph 12.1 (By AAFC for Cause) do not constitute a penalty, and are otherwise fair, just and proportional given the nature of the **Parties**, their respective mandates and corporate objectives, the allocation of risks under the **License**, the goals of the **Parties**, nature of the seed created in exercising the **Licensed Rights**, and the consequences to AAFC if the Company commits the aforementioned breaches.

### 12.4. Procedure

Termination shall be implemented by a notice effective as of the date stated therein, but termination shall be subject to paragraph 12.6 (The Company's Duties on Termination) and be without prejudice:

- 12.4.1. to the right of AAFC to sue for and recover any royalties or other sums due AAFC; and
- 12.4.2. to the remedy of either **Party** in respect of any previous breach of the **License**.

### 12.5. Effect on Sub-Licensees

All sub-licenses shall terminate with the **License**.

### 12.6. The Company's Duties on Termination

Upon termination, expiration or surrender of the **License**, the Company shall at its own cost:

- 12.6.1. deliver a detailed statement to AAFC of the inventory of the seed created exercising the **Licensed Rights** then existing, but not sold by the Company, as of the date of expiration, termination or surrender;
- 12.6.2. pay all costs due under the **License** either by the Company on its behalf or a sub-licensee, up to and including the termination or surrender date, within thirty (30) days of the termination or surrender;
- 12.6.3. pay all costs due under the **License**, subsequent to the termination or surrender, for any seed of the **Variety** sold by the Company or its sub-licensees after termination or surrender, within seven (7) days of the liability being incurred;

- 12.6.4. grant back to AAFC any research data arising from the seed created by exercising the **Licensed Rights** or otherwise under the **License**;
- 12.6.5. dispose of any remaining seed inventory created by exercising the **Licensed Rights** in accordance with paragraph 12.7 (Sale/Disposal of Remaining Inventory); and

assign to AAFC (or her nominee) any equities, goodwill, or other rights which the Company has or alleges to have acquired in the seed created exercising the **Licensed Rights** or derived in the **Selling**. The Company shall also execute such further documentation as AAFC may reasonably request in order to confirm such assignment.

- 12.7. Sale/Disposal of Remaining Inventory  
If, upon the expiry or termination date, the Company or its agents have seed of the **Variety** remaining in inventory, the Company shall make reasonable commercial efforts to sell the inventory as **Certified Seed** and the Company shall pay to AAFC the royalty rate prescribed in paragraph 5.2 (Royalty) on any sales of such inventory as **Certified Seed**.

If the Company is not able to sell the inventory as Certified Seed within one hundred and eighty (180) days of the expiry or termination date:

- 12.7.1. AAFC will be given the opportunity to arrange for another licensee within the next one hundred and eighty (180) days, and to have the new licensee acquire the inventory from the Company at the Company's cost.

However,

- 12.7.2. If AAFC does not secure another licensee in the timeframe provided in sub-paragraph 12.7.1, the Company may dispose of the inventory as commercial grain, royalty free.

- 12.8. Surviving Obligations

All obligations of the **Parties** which expressly or by their nature survive termination, expiration, or surrender of the **License** shall continue in full force and effect subsequent to and notwithstanding such termination or expiration, until they are satisfied or by their nature expire, including but not limited to indemnification, records, quality control, audit, and royalties.

## 13. INTENT & INTERPRETATION

- 13.1. Entire Agreement

The **License** constitutes the entire and exclusive agreement between the **Parties** pertaining to the **Sale** of the seed created in exercising the **Licensed Rights**, and supersedes all prior agreements, conditions, obligations, understandings, and negotiations both written and oral. The **License** sets forth all obligations, undertakings, conditions, representations and warranties forming part of, or in any way affecting or relating to the **Sale** of the seed created exercising the **Licensed Rights**. The **Parties** acknowledge that with respect to the **Sale** of the seed created in exercising the **Licensed Rights**, there are no agreements, obligations, undertakings, representations or

warranties whether collateral, oral or written, between the Company and AAFC other than those expressly set out in the **License**.

13.2. No Third Parties

The **License** is not intended to confer upon any person other than the **Parties**, any rights or remedies hereunder.

13.3. No Pre-Contractual Inducing Representations

The **License** supersedes and revokes all negotiations, arrangements, letters of intent, offers, proposals, brochures, term sheets, representations, memoranda of understandings and information conveyed, whether oral or in writing or electronically, between the **Parties**, or any other person purporting to represent the Company or AAFC. The **Parties** agree that:

13.3.1. neither has been induced to enter into the **License** by any representations whatsoever not set expressly forth in the **License**;

13.3.2. neither has relied on any such representations;

13.3.3. no such representations shall be used in the interpretation or construction of the **License**; and

13.3.4. no claims (including, without limitation, loss of profits, indirect, incidental, consequential damages and economic loss) arising directly or indirectly, from any such representation, negligent or otherwise, shall accrue in law or equity or any other legal basis or principles, or be pursued by the Company, and AAFC shall have no liability for any such claims.

13.4. Due Diligence Search

The Company agrees that it has conducted its own due diligence examinations in order to satisfy itself of the full, true and plain disclosure of all facts pertinent to the **Variety** and all representations made by AAFC.

13.5. Independent Legal Advice

It is acknowledged by the **Parties** that each has had legal advice to the full extent deemed necessary by each **Party**. Furthermore, the **Parties** acknowledge that neither acted under any duress in negotiating, drafting and executing the **License**.

13.6. No Adverse Presumption in Case of Ambiguity

There shall be no presumption that any ambiguity in the **License** be resolved in favor of either of the **Parties**. For greater certainty, the *contra proferentum* rule (or analogous concept under any other legal basis or principles) shall not be applied in any interpretation of the **License**.

13.7. Severability



If any part of the **License** is declared or held any or all of invalid, void, or contrary to public policy for any other reason, then:

#### 13.7.1. NON-MATERIAL

if the invalid provision is not material or fundamental to the **License**, (or if applicable, not an important provision under the Civil Code of Quebec) the invalid provision shall not affect the validity of the remainder which remainder shall continue in full force and effect and be construed as if the **License** had been executed without the invalid provision; or

#### 13.7.2. MATERIAL OR FUNDAMENTAL

if the invalid provision is material or fundamental (or if applicable, an important provision under the Civil Code of Quebec) to the **License** then the **License** shall terminate effective the 31<sup>st</sup> day from either the final judicial judgment or arbitral tribunal award.

#### 13.8. Successors and Assigns

The **License** will be for the benefit of and be binding upon the heirs, executors, administrators, permitted successors, and permitted assigns of the Company and other legal representatives, as the case may be, of each of the **Parties**. Every reference in the **License** to any **Party** includes the heirs, executors, permitted administrators, permitted successors, and permitted assigns, and other permitted legal representatives of the **Party**.

#### 13.9. Plurality & Gender

Reference to a **Party** will be read as if all required changes in the singular and plural and all grammatical changes rendered necessary by gender had been made.

#### 13.10. Not a Joint Venture

The **Parties** expressly disclaim any intention to create a partnership, joint venture or joint enterprise. The **Parties** acknowledge and agree that:

13.10.1. nothing contained in the **License** nor any acts of any **Party** shall constitute or be deemed to constitute the **Parties** as partners, joint venturers or principal and agent in any way or for any purpose;

13.10.2. no **Party** has the authority to act for, or to assume any obligation or responsibility on behalf of any other **Party**; and

13.10.3. the relationship between the **Parties** is that of licensor and licensee.

#### 13.11. Compliance with Law

The **Parties** shall comply with all applicable laws, as those laws may be amended, revised, consolidated, substituted from time to time, even if such amendment, revision, consolidation, substitution derogates prospectively or retroactively from the **Parties'** vested or accrued rights, obligations and liabilities under the **License**.

#### 13.12. No Implied Obligations

No implied terms or obligations of any kind, by or on behalf of either of the **Parties**, shall arise from anything in the **License**. The express covenants and agreements herein contained and made by the **Parties** are the only covenants and agreements upon which any rights against either of the **Parties** may be founded.

13.13. Access to Information

Notwithstanding any provision to the contrary in the **License**, the Company acknowledges that AAFC is subject to the Access to Information Act, R.S.C. 1985, c.A-1 and related acts, and may be required to release, in whole or in part, the **License** and any other information or documents in AAFC's possession or control relating to the **License** and the **Parties**.

13.14. Choice of Law

This **License** shall be interpreted according to the laws of the Province of (*enter applicable province*) and the laws of Canada in force there.

13.15. Dispute Resolution

**Disputes** concerning this **License** shall not be litigated. All **Disputes** arising in connection with this **License** which cannot be resolved through negotiations to the mutual satisfaction of both parties within sixty (60) days, or such longer period as may be mutually agreed upon, may be submitted by either party to arbitration in accordance with the *Commercial Arbitration Act* of Canada, R.S.C., 1985, c. 17 (2nd Supp.), as amended, and shall be subject to the following:

13.15.1. The party requesting arbitration shall do so by written notice to the other party.

13.15.2. The arbitration shall take place in (*enter appropriate city*) before a single arbitrator to be chosen jointly by the parties. Failing agreement of the parties on a single arbitrator within thirty (30) days of the notice requesting arbitration, either party may apply to a judge of a court having jurisdiction in (*enter appropriate city, province*), the appointment of a single arbitrator.

13.15.3. Each party shall pay its own costs and an equal share of all of the costs of the arbitration and the fees of the arbitrator, except for the exceptional circumstance in which an arbitral award may require the payment of all costs by a party who has brought a plainly frivolous **Dispute**.

13.15.4. The arbitrator shall issue a written decision as soon as practicable after the conclusion of the final hearing, but in any event no later than sixty (60) days thereafter, unless that time period is extended for a fixed period by the arbitrator on written notice to each party because of illness or other cause beyond the arbitrator's control. The decision shall be in the form of an award made in writing and signed by the arbitrator.

13.15.5. The decision shall be final and binding on the parties in accordance with the *Commercial Arbitration Act* of Canada.

Neither party may request arbitration in respect of a breach of this **License** after the fourth anniversary of the day on which the requesting party first discovered that breach, unless the other party has agreed in writing to extend the period.

13.16. Court

Subject to paragraph 13.15 (Dispute Resolution), for any litigation concerning this **License**, including litigation arising from arbitration, the parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the Courts of the Province of (*enter appropriate province*), and all courts competent to hear appeals therefrom. The parties expressly exclude any conflict of laws rules or principles that might refer **Disputes** under this **License** to the laws of another jurisdiction. Despite the foregoing, if this **License** or any aspect of it becomes a subject of judicial proceedings in the United States of America, then the Company irrevocably waives any and all rights it has to a trial by jury in the United States, and the Company agrees that the matter will be heard before a judge sitting alone, due to the nature and complexity of the **Intellectual Property** and applicable laws.

13.17. Material Breach

The failure, neglect or unwillingness of a **Party** to use or diligently participate in and prosecute a **Dispute** through the dispute resolution process outlined in paragraph 13.15 (Dispute Resolution) is a material breach of the **License**.

13.18. Waiver of Counterclaims

The Company waives any and all of its rights to interpose any claims, deductions, setoffs or counterclaims of any nature in any **Dispute** with respect to the **License**.

13.19. Due Diligence Audits

If, in a subsequent transaction, a third **Party** requires to review this **License** as part of a due diligence chain of title search, the Company hereby authorizes the release of this **License** subject to deleting any financial or proprietary or other confidential information contained herein.

13.20. Recitals Accurate

The **Parties** acknowledge the truth and accuracy of the recitals and acknowledge that the recitals may be used by a court, mediator or arbitrator to help resolve any **Dispute**.

13.21. *Force majeure*

13.21.1. EVENTS

Subject to making all payments required under the **License**, neither **Party** shall be in breach of any of its obligations under the **License** where the failure to perform or delay in performing any obligation is due, wholly or in part, directly or indirectly to the occurrence of a *force majeure* event including, without limitation:

13.21.1.1. war, whether declared or not, civil war, revolution, acts of piracy / terrorism, acts of sabotage;

- 13.21.1.2. natural disasters such as violent or destructive storms, cyclones, earthquakes, tidal waves floods, destruction by lightning;
- 13.21.1.3. explosions, fires, destruction of machines, factories, and any kind of installation;
- 13.21.1.4. boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises, and work stoppages which occur in the enterprise of the **Party** seeking relief; and
- 13.21.1.5. acts of governmental bodies, agencies, boards, whether lawful or unlawful other than those of Agriculture and Agri-Food Canada.

But does not include:

- 13.21.1.6. the lack of regulatory or other approvals, licenses, permits and authorizations necessary for the performance of the **License** which are issued by a public authority of any kind whatsoever for which the Company did not apply for or diligently prosecute;
- 13.21.1.7. the inability of the affected **Party** to obtain financing or any other financial inability on the part of either **Party** to meet its obligations under the **License**;
- 13.21.1.8. *force majeure* events that the affected **Party** knew or should have reasonably known at the time of negotiating the **License** were probable or avoidable or the effects of which could be minimized, and the affected **Party** took no steps to deal with such *force majeure* events, including without limitation obtaining the appropriate insurance, using updated machinery; and
- 13.21.1.9. the portion of the breach or delay due to the failure of the affected **Party** to take all necessary reasonable steps to minimize, overcome or control the effects of the *force majeure* event.

#### 13.21.2. DUTY TO NOTIFY

The **Party** affected by a *force majeure* event as contemplated in sub-paragraph 13.21.1 (*Force majeure* - Events) shall:

- 13.21.2.1. give notice to the other **Party** of such *force majeure* and its effects on the affected **Party's** ability to perform as soon as practicable after the *force majeure* and its effects upon the affected **Party's** ability to perform become known to that **Party**; and
- 13.21.2.2. take all reasonable efforts to correct, compensate or minimize the effect of the *force majeure* event.

#### 13.21.3. COMMENCEMENT OF RELIEF

The affected **Party** shall:

13.21.3.1. be excused of its obligations under the **License** to the extent necessitated by the *force majeure* event from the time of the *force majeure* event or if notice was not given as soon as practical, from the receipt of such notice. Failure to give notice makes the failing **Party** liable in damages for losses suffered by the other **Party** which otherwise could have been avoided; and

13.21.3.2. complete or continue performance of its obligations and duties under the **License** as soon as practical after the cessation, removal, or overcoming of the *force majeure* event.

#### 13.21.4. TERMINATION OF AGREEMENT

If the *force majeure* event continues in excess of sixty (60) consecutive days or in the aggregate sixty (60) days over any consecutive two hundred (200) days, then at any time thereafter either **Party** shall have the option to renegotiate the **License** with the other **Party**. If the **Parties** are unable to agree to the terms of the proposed amended **License** within sixty (60) days from the notice to negotiate, then the **License** shall terminate on the 61<sup>st</sup> day.

#### 13.21.5. POSTPONEMENT OF OBLIGATIONS

Any obligations of a **Party** under the **License** shall be postponed automatically to the extent and for the period that the affected **Party** is prevented from meeting those obligations by reason of any cause beyond its reasonable control (other than lack of funds and applicable regulatory approval). The affected **Party** shall immediately notify the other **Party** of the commencement, nature of such cause and probable consequence. The affected **Party** shall also use its reasonable diligent efforts to render performance in a timely manner, utilizing all resources reasonably required in the circumstances.

#### 13.22. Waiver

No condoning, excusing, or overlooking by either of the **Parties** of any default by the other **Party**, at any time or times, in performing or observing any of the **Parties** respective covenants, will operate as a waiver renunciation, surrender, or otherwise affect the rights of the **Parties** in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by the **Parties**, except by an express waiver in writing.

#### 13.23. No Estoppel Due to Third Party Practices

No custom, practice or usage regarding other licenses between AAFC and other parties shall preclude at any time the strict enforcement of the **License** by AAFC or the Company.

#### 13.24. Contract Always Speaks

Where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the **License** according to its true spirit, intent and meaning.

13.25. Time is of the Essence

Time shall be of the essence in the **License** with respect to the financial and **Sale** obligations of the Company.

13.26. Headings

13.26.1. All headings in the **License** have been inserted as a matter of convenience and for reference only, and in no way define, limit, enlarge or modify the scope or meaning of the **License** or any of its provisions.

13.26.2. Nevertheless an arbitrator or judge may use any, or all, of the table of contents, recitals, and headings when reviewing the covenants, statements, representations and warranties, and conditions subsequent to better understand the commercial and legal intent of the **License's** provisions.

13.27. Internal References

Any reference in the **License** to an Article, paragraph, sub-paragraph, will mean an Article, paragraph or sub-paragraph of the **License**, unless otherwise expressly provided.

13.28. Precedence Over Appendices

If there is a conflict or ambiguity between the **License** proper and any appendix thereto, the interpretation consistent with **License** proper (taking into consideration the statements in the recitals and headings) shall prevail and apply, notwithstanding any wording to the contrary in the applicable appendix.

13.29. Appendices

Subject to paragraph 13.28 (Precedence Over Appendices) the document attached hereto as Appendix "A" forms an integral part of this **License** as fully as if it were set forth herein *in extenso*.

## 14. LEGAL RIGHTS

14.1. Amendments

No modification or waiver of any provision of the **License** will be inferred from anything done or omitted by either of the **Parties**, except by an express amendment in writing, duly executed by the **Parties** in advance.

14.2. Assignment

The **License** is personal to the Company.

14.3. Mode of Assignment / Approval Conditions

Without derogating from paragraph 14.2 (Assignment), the Company shall not assign (or transfer, sell, encumber, pledge, grant a security interest sub-license or otherwise deal)

or permit any such assignment, in whole or in part, of the **License** or any of its interest, rights or obligations hereunder, whether such assignment takes place by way of:

- 14.3.1. sale of assets;
- 14.3.2. sale of shares;
- 14.3.3. amalgamation, merger or other reorganization of the Company;
- 14.3.4. merger, transfer, conversion, assignment, redemption, issuance, sale, cancellation, pledge, conversion or other dealings with any securities of the Company;
- 14.3.5. operation of law;
- 14.3.6. acquisition by a person or persons acting in concert of a majority interest of the securities of the Company by a person or persons acting in concert who did not hold such a majority interest at the time of the initial public offering (IPO) or at any time after the IPO;
- 14.3.7. operation of contract; or
- 14.3.8. otherwise in any manner or structure whatsoever;

without the written consent of AAFC, which consent subject to sub-paragraph 14.3.9 will not be unreasonably withheld.

- 14.3.9. Any consent from AAFC shall be contingent and effective only upon receipt by AAFC of payment of five percent (5%) of all consideration involved in the assignment, transfer, sale, encumbrance or other transaction.
- 14.3.10. Consent to any assignment will not be construed as consent to any other assignment.

#### 14.4. No Consent – Material Breach

Failure of the Company to obtain the prior written consent of AAFC to any assignment shall be deemed to be a material breach of the **License**.

#### 14.5. Subcontracting

The Company has the right to subcontract any portion, but not all, of the **License**, subject to the following:

- 14.5.1. The Company shall notify AAFC in writing of any significant subcontracts or subcontractors who may have an interest in the technology or a collaboration with AAFC;
- 14.5.2. the subcontract cannot be a *de facto* assignment; and
- 14.5.3. no rights, obligations, power or control vested in the Company shall be contingently or otherwise transferred to any third party.

14.6. No Third Party Rights

Nothing expressed or implied in the **License** is intended to, or shall be construed to confer on or give to, any person other than the **Parties**, any rights or remedies under or by reason of the **License**.

14.7. Remedies Cumulative

All rights, powers and remedies provided by the **License** are cumulative with, and not exclusive of, the rights, powers or remedies provided by law independently of the **License**.

14.8. Mutual Assistance

The **Parties** will at all times hereafter, upon every reasonable request of the other, make, do, and execute or cause to be procured, made, done, and executed, all such further acts, deeds and assurances for the carrying out of the terms, covenants and agreements of the **License**, according to the true intent and meaning of the **License**. These obligations shall continue post termination or expiry until all pre and post termination obligations are satisfied.

## 15. CROWN GENERAL

15.1. No Bribes

The Company warrants that no bribe, gift, or other inducement has been paid, given, promised or offered to any Government official or employee for the obtaining of this **License**.

15.2. No Share to Members of Parliament

Pursuant to the Parliament of Canada Act, R.S.C. 1985, c.P-1, no member of the House of Commons or Senate will be admitted to any share or part of the **License** or to any direct material benefit to arise from the **License**.

15.3. Public Office Holders

It is a term of this **License** that no former public Office holder, who is not in compliance with the post employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders, shall derive a direct material benefit from this **License**.



15.4. Minister Not Fettered

Nothing in the **License** shall derogate or otherwise fetter the ability of AAFC to regulate, administer, manage, or otherwise deal with agriculture and all attendant matters thereto.

15.5. Federal Legislation

The application to the **License** of any Federal act or regulation includes any subsequent amendment, revision, substitution, consolidation to that act or regulation, notwithstanding that such amendment, revision, or substitution occurred after the execution of the **License** or may have a retroactive effect.

15.6. Right to Legislate

Nothing in the **License** shall prohibit, restrict or affect the right or power of the Parliament of AAFC to enact any laws whatsoever with respect to any area of law for which the Parliament of Canada has legislative jurisdiction, even if the enactment of any such law affects the **License**, its interpretation, or the rights, obligations, liabilities, vested or not, accrued or accruing, of the **Parties**.

## 16. NOTICE

16.1. Addresses / Contacts

Wherever in this **License** it is required or permitted that notice or demand be given, or served by either **Party** to or on the other **Party**, such notice or demand will be in writing and will be validly given or sufficiently communicated if hand delivered or forwarded by electronic transmission, registered mail, priority post mail, telegram, or facsimile or sent by overnight delivery by a nationally recognized courier as follows:

The addresses for delivery are:

To AAFC:

Name

Commercialization Officer

Office of Intellectual Property & Commercialization

Agriculture and Agri-Food Canada

Research Centre

[Address]

[City / Province / pc]

[Telephone]

[Email]

To the Company:

Name

Title

Company

[Address]

[City / Province/ p/c]

[Telephone]

[Fax]

[Email]

16.2. Deemed Delivery

Notice will be deemed to have been delivered:

16.2.1. if delivered by hand, upon receipt;

16.2.2. if sent by electronic transmission, forty-eight (48) hours after the time of confirmed transmission, excluding from the calculation weekends and public holidays;

16.2.3. if sent by registered mail, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption, such notice will be delivered by hand or electronic transmission.

16.3. Change of Address

The **Parties** may change their respective addresses for delivery by delivering the notice of change of address to the above noted address, in which case the change will take effect thirty (30) days from that delivery.

## 17. EXECUTION

IN WITNESS WHEREOF this **License** has been executed by duly authorized representatives of the **Parties**.

Executed in duplicate, and effective this       day of       , (year).

### FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
Anita Ploj, Director  
Office of Intellectual Property and Commercialization  
Agriculture and Agri-Food Canada

### FOR (THE COMPANY)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name in Block Letters)

\_\_\_\_\_  
(Title)

## APPENDIX “A” – VARIETY DESCRIPTION

**EXHIBIT A – LETTER OF INTENT**

**EXHIBIT B – MATERIAL TRANSFER AGREEMENT**