

PLANT VARIETY LICENSE AGREEMENT

This Agreement is entered into between the U.S. Government as represented by the U.S. Department of Agriculture, Agricultural Research Service (hereinafter referred to as "USDA") and (company name), a (state) corporation having offices at (street address, city, and state) (hereinafter referred to as "SEED COMPANY").

WHEREAS, USDA has performed research to develop a new (common name of crop) variety that (describe novel aspects of the variety) and owns certain valuable property rights thereon; and

WHEREAS, USDA desires, in the public interest, that this (common name of crop) variety be propagated for distribution so that its benefits are readily available to the public in the shortest time possible; and

WHEREAS, SEED COMPANY represents that it has the facilities, personnel and expertise in the propagation, maintenance and marketing of (common name of crop) varieties and is willing to expend reasonable efforts and resources to propagate and market this new variety;

NOW THEREFORE, in consideration of the foregoing and pursuant to 35 USC 207 and 37 CFR 404 and the mutual promises and obligations hereinafter set forth, USDA and SEED COMPANY, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

1.1 Licensed PVPC means U.S. Plant Variety Protection Certificate No. _____, '(VARIETY NAME),' issued on (date).

1.2 Licensed Variety means the new and distinct (common name of crop) variety described in the Licensed PVPC, including seeds, plants and tissues thereof.

1.3 Licensed Product means commercial seed of the Licensed Variety.

1.4 Licensed Territory One means the United States of America, its possessions and territories.

1.5 Licensed Territory Two means (list of countries where SEED COMPANY and USDA mutually agree that SEED COMPANY will make application for breeder's rights on behalf of USDA).

1.6 Licensed Breeder's Rights means the breeder's rights for the Licensed Variety applied for and obtained by SEED COMPANY on behalf of USDA in countries outside the United States that are included in Licensed Territory Two.

1.7 Contract Grower means a person or firm producing Licensed Product for SEED COMPANY. All sales of Licensed Product by Contract Growers shall be in the name of SEED COMPANY. All Contract Growers shall be required to abide by the terms and conditions of this Agreement.

1.8 Net Sales means the gross sales of Licensed Product by SEED COMPANY to an independent third party less the sum of the following:

- (a) discounts, in amounts customary in the trade, for quantity purchases, cash payments, wholesalers, and distributors;
- (b) amounts repaid or credited by reason of rejection or returns; and
- (c) any freight or other transportation costs, insurance, duties, tariffs and sales and excise taxes based directly on sales or turnover or delivery of material produced under this Agreement.

No deductions shall be made for commissions paid to sales persons or agents or for the cost of collections. Licensed Product produced by SEED COMPANY for its own use shall be included for the purposes of computing Net Sales, except such Licensed Product used for non-revenue producing activity such as promotional items or market trials. Licensed Product shall be considered sold when billed or invoiced.

1.9 Effective Date means the later date on which this Agreement is executed by a party to the Agreement.

ARTICLE II GRANT

2.1 USDA grants to SEED COMPANY, subject to the terms and conditions herein, an exclusive license under the Licensed PVPC in Licensed Territory One to propagate and maintain the Licensed Variety and to sell Licensed Product for the term of this Agreement. SEED COMPANY may provide the Licensed Variety to Contract Growers for seed increase and production purposes.

2.2 USDA grants to SEED COMPANY, subject to the terms and conditions herein, an exclusive license under the Licensed Breeder's Rights in Licensed Territory Two to practice all of the enumerated plant breeder's rights available under the laws of each country included within Licensed Territory Two.

2.3 USDA grants to SEED COMPANY the right to grant sublicenses subject to the provisions of this Agreement and to the prior submission to and approval by USDA of the proposed sublicense, which approval shall not be unreasonably withheld. All sublicenses shall make reference to this Agreement, including the rights retained by the U.S. Government in accordance with the provisions of Article III below. SEED COMPANY shall provide USDA with a copy of all sublicense agreements.

2.4 Subject to the requirements of Paragraph 6.3, SEED COMPANY and its sublicensees may sell and export harvested material of the Licensed Variety, and products made directly from the harvested material, that are produced through the authorized propagation of the Licensed Variety. SEED COMPANY, or its sublicensees, shall apply for breeder's rights for the Licensed Variety prior to any sales or imports of harvested material of the Licensed Variety into any country outside the United States that is included in the Licensed Territory Two.

ARTICLE III RESERVATION OF RIGHTS

3.1 The licenses granted in Article II above are subject to the reservation by USDA of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the Licensed PVPC and the Licensed Breeder's Rights throughout the world by or on behalf of the U.S. Government, and on behalf of any foreign government pursuant to any existing or future treaty or agreement to which the United States is a signatory, including the right to engage in research, either alone or with one or more third parties, with the Licensed Variety. USDA reserves the right to make propagation material of the Licensed Variety available to third parties for breeding purposes.

3.2 USDA reserves the right to require SEED COMPANY to grant sublicenses in the United States to responsible applicants, on reasonable terms, under the following circumstances:

- (a) such grant is necessary to fulfill health or safety needs; or
- (b) such grant is necessary to ensure that Licensed Product is made available for utilization by the United States public in geographic regions outside of SEED COMPANY's marketing and distribution area.

ARTICLE IV FEES, ROYALTIES, AND PAYMENTS

4.1 SEED COMPANY shall reimburse USDA for the filing and certificate fees paid by USDA to the U.S. Plant Variety Protection Office in the total amount of _____ Dollars (\$X,XXX.XX), no part of which shall be refunded for any reason. Payment shall be due within thirty (30) days of the Effective Date.

4.2 SEED COMPANY shall pay USDA royalties of _____ percent (_%) on the Net Sales of Licensed Product by SEED COMPANY, its sublicensees or its Contract Growers. Royalties shall be due and payable upon submission of each royalty report, in accordance with the provisions of Paragraph 5.2 below.

4.3 SEED COMPANY shall apply for plant breeder's rights for the Licensed Variety in all countries outside the United States that are included in Licensed Territory Two, and all such applications shall be made in the name of the United States of America as represented by the Secretary of Agriculture. SEED COMPANY shall be responsible for the preparation and

submission of all required documents to the appropriate authorities. USDA shall provide reasonable assistance to SEED COMPANY as required for the preparation and submission of documents. SEED COMPANY shall pay any and all fees required to obtain and maintain breeder's rights for the Licensed Variety in Licensed Territory Two.

4.4 SEED COMPANY shall provide to USDA, at SEED COMPANY's expense, up to (reasonable quantity) of Licensed Product per year for research and demonstration purposes. USDA shall submit to SEED COMPANY a written request for such material at least _____ (#) days prior to the desired delivery date.

4.5 Other than royalties payable under Paragraph 4.2 above, SEED COMPANY shall pay to USDA fifty percent (50%) of any payments received from a sublicensee as consideration for the rights granted to the sublicensee for the Licensed Variety, as provided in Paragraph 2.3 above. Payment to USDA shall be due within thirty (30) days of receipt by SEED COMPANY of any such payments by sublicensees.

4.6 All payments due USDA under this Article IV shall be payable in United States dollars for the account of USDA/Agricultural Research Service, License No. (XXXX-XXX). All checks and bank drafts shall be drawn on United States banks. A late payment of a license fee or royalty shall automatically raise said fee or royalty by an amount equal to one percent (1%) of the amount due for each month beyond the due date of such late payment. Conversion of foreign currency to United States dollars shall be made on the last business day of the applicable reporting period for the purchase of United States dollar bank wire transfers for settlement of such payment obligations. Any and all loss of exchange, value, taxes, or other expenses incurred in the transfer or conversion of other currency to United States dollars shall be paid entirely by SEED COMPANY.

ARTICLE V REPORTS AND RECORDS

5.1 SEED COMPANY shall provide written annual reports within sixty (60) days of the end of each calendar year detailing progress being made to increase seed of the Licensed Variety. No further annual progress reports will be required after notification of the first commercial sale of Licensed Product unless otherwise requested by USDA.

5.2 After notification of the first commercial sale of Licensed Product, SEED COMPANY shall submit to USDA within sixty (60) days after each calendar half year ending June 30th and December 31st, reports setting forth for the preceding six (6) month period the amount of Licensed Product made, used, or sold or otherwise disposed of by SEED COMPANY, and its sublicensees and Contract Growers, the Net Sales thereof and the royalties due pursuant to Paragraph 4.2 above. The report shall include an itemized accounting of the number of units of Licensed Product sold, price per unit, and each deduction taken from the gross sales for the purpose of calculating Net Sales. The SEED COMPANY shall also include an itemized accounting of all payments other than royalties due to USDA pursuant to Paragraph 4.5 above. A written report shall be due for each reporting period whether or not any royalties are due to USDA.

5.3 SEED COMPANY, and its sublicensees, shall keep accurate and complete records as are required for the determination of royalties owed to USDA pursuant to this Agreement. Such records shall be retained for at least five (5) years following a given reporting period. Upon reasonable notice and at the expense of USDA, such records shall be available during normal business hours for inspection by an accountant selected by USDA and approved by SEED COMPANY for the sole purpose of verifying reports and payments hereunder. Such accountant shall not disclose to USDA any information other than information relating to the accuracy of reports and payments made under this Agreement. SEED COMPANY, and its sublicensees, shall provide full cooperation in such inspection and audit. Such cooperation shall include, but not be limited to, providing sufficient time for such examination and convenient access to relevant personnel and records. If an inspection and audit show an underreporting or underpayment in excess of five percent (5%) for any twelve (12) month period, then SEED COMPANY shall reimburse USDA for the cost of the inspection and audit. All payments required under this Paragraph 5.3 shall be due within thirty (30) days of the date USDA provides SEED COMPANY notice of the payment due.

5.4 USDA shall have the right, upon reasonable notice, to enter the property owned, leased or controlled by SEED COMPANY, during regular business hours, for the purpose of verifying compliance with the terms and conditions of this Agreement.

ARTICLE VI LICENSEE PERFORMANCE

6.1 SEED COMPANY, or its sublicensees or agents, shall expend reasonable efforts and resources to protect, propagate and market the Licensed Variety for the purpose of offering Licensed Products for sale. SEED COMPANY shall offer Licensed Products for sale in the United States within ____ (#) years of the Effective Date, (and SEED COMPANY shall offer Licensed Products for sale in Licensed Territory Two within ____ (#) years of the Effective Date) unless this (these) period(s) is (are) extended by mutual agreement of the parties.

6.2 SEED COMPANY shall sell Licensed Product in the United States only as a class of certified seed, and seed production shall be limited to ____ (#) generations beyond breeder seed. SEED COMPANY shall maintain all certification standards as may be required by any authorized certifying agency in the jurisdictions where Licensed Product is being produced.

6.3 Prior to the sale of Licensed Product in, or the export of harvested material of the Licensed Variety to, any country outside the United States that is included in Licensed Territory Two, SEED COMPANY shall apply for breeder's rights for the Licensed Variety in that country. SEED COMPANY shall ensure compliance with all official requirements necessary for certification of the Licensed Variety in Licensed Territory Two.

6.4 SEED COMPANY shall exercise due diligence and make reasonable efforts to ensure that all Licensed Product sold is of high quality and genetic purity. SEED COMPANY shall implement and monitor quality assurance standards for all Contract Growers.

6.5 SEED COMPANY shall notify USDA in writing within fifteen (15) days after the first commercial sale of Licensed Product by SEED COMPANY.

6.6 Licensed Product sold or otherwise disposed of in the United States by SEED COMPANY, or its sublicensees, shall be manufactured substantially in the United States. For the purposes of this Agreement, manufactured shall mean grown.

6.7 After the first sale of Licensed Product in the United States, SEED COMPANY shall keep Licensed Product reasonably available to the United States public during the term of this Agreement.

ARTICLE VII DURATION, MODIFICATION, AND TERMINATION

7.1 This Agreement shall commence on the Effective Date and, unless sooner terminated as provided under this Article VII, shall remain in effect until the expiration of the last to expire certificate of protection under the Licensed PVPC and Licensed Breeder's Rights.

7.2 This Agreement may be modified or terminated by USDA subject to the provisions of Paragraphs 7.3 and 12.4 below if it is determined that any one of the following has occurred:

- (a) SEED COMPANY, or its sublicensees, fails to meet the obligations set forth in Article VI above;
- (b) Such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of this Agreement and such requirements are not reasonably satisfied by SEED COMPANY, or one of its sublicensees;
- (c) Materials for propagation of the Licensed Variety sold in the United States are not being produced substantially in the United States;
- (d) SEED COMPANY has willfully made a false statement or willfully omitted a material fact in the license application or in any report required by this Agreement;
- (e) SEED COMPANY, or its sublicensees, commits a substantial breach of a covenant or agreement contained in this Agreement; or
- (f) SEED COMPANY is adjudged bankrupt or has its assets placed in the hands of a receiver or makes any assignment or other accommodation for the benefit of creditors.

7.3 Prior to modification or termination of this Agreement, USDA shall furnish SEED COMPANY and any sublicensees of record a written notice of intention to modify or terminate, and SEED COMPANY and any notified sublicensee shall be allowed thirty (30) days after the

date of such notice to remedy any breach or default of any covenant or agreement of this Agreement or to show cause why this Agreement should not be modified or terminated.

7.4 SEED COMPANY may terminate this Agreement at any time upon ninety (90) days written notice to USDA. Such notice shall include an explanation of the reasons for termination.

7.5 Upon termination of this Agreement, all sums that have accrued and are due to USDA pursuant to Article IV hereunder shall become immediately payable. In all other respects, the rights and obligations of the parties hereto concerning the Licensed Variety included in such termination shall cease as of the effective date of such termination. SEED COMPANY may, however, sell all Licensed Product under propagation and in inventory provided that royalties are paid on any such sales in accordance with the provisions of Article IV.

7.6 In the event of termination of this Agreement, any sublicense of record granted pursuant to Paragraph 2.3 may either be converted to a license directly between sublicensee and USDA or be terminated.

ARTICLE VIII ENFORCEMENT

8.1 SEED COMPANY shall use all commercially reasonable efforts to protect USDA's property rights in the Licensed Variety and shall notify USDA of any infringement of the Licensed PVPC or Licensed Breeder's Rights that comes to the attention of SEED COMPANY. In the event of such infringement, the parties hereto shall confer and shall use best efforts to reach mutual agreement upon the best course of action, including but not limited to, requiring the infringing party to take a sublicense under the Licensed PVPC or Licensed Breeder's Rights.

8.2 The U.S. Government shall not be obligated to enforce the Licensed PVPC or Licensed Breeder's Rights against infringers, and may grant the right of enforcement to SEED COMPANY, pursuant to Title 35, Section 207(a)(2) and Title 35, Chapter 29, of the U.S. Code. SEED COMPANY shall continue to make all payments accruing to the USDA until such time as this Agreement is terminated by either party, even if the Government elects not to enforce the Licensed PVPC or Licensed Breeder's Rights against infringers.

ARTICLE IX MARKINGS AND NON-USE OF NAMES

9.1 SEED COMPANY, and its sublicensees and Contract Growers, shall include in its catalogs, advertising and commercial documents the name of the Licensed Variety and the applicable Licensed PVPC number.

9.2 SEED COMPANY, and its sublicensees and Contract Growers, shall mark packages containing, or invoices for, Licensed Product with the applicable Licensed PVPC number.

9.3 In order to preserve rights under the Licensed Breeder’s Rights, SEED COMPANY, and its sublicensees, shall ensure that the appropriate markings are used on Licensed Products and in any catalogs, advertising, commercial documents, as may be required under the laws of each country included within Licensed Territory Two.

9.4 SEED COMPANY shall not use the name of the U.S. Government, the name of any department or agency of the U.S. Government, the name of any U.S. Government employee, or any adaptation of the above in any promotional activity without prior written approval from USDA.

ARTICLE X
REPRESENTATIONS AND WARRANTIES

10.1 USDA represents and warrants that the United States of America as represented by the Secretary of Agriculture owns the Licensed Variety and that USDA has the authority to issue licenses under the Licensed PVPC and Licensed Breeder’s Rights.

10.2 USDA does not warrant that the Licensed Variety can be exploited as provided under this Agreement without infringing the intellectual property rights of others. USDA FURTHER MAKES NO WARRANTIES AS TO THE MERCHANTABILITY OR FITNESS OF THE LICENSED VARIETY OR THE LICENSED PRODUCT FOR ANY PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES EXPRESS OR IMPLIED.

ARTICLE XI
NOTICES

Written notices and reports required to be given under this Agreement, and submission of license execution and maintenance fees and royalties, shall be mailed by first class mail, postage prepaid and addressed as follows:

If to USDA:

Assistant Administrator
USDA, ARS, Office of Technology Transfer
5601 Sunnyside Avenue, 4-1159
Beltsville, MD 20705-5131

If to SEED COMPANY:

ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 This Agreement shall not be transferred or assigned by SEED COMPANY to any party other than to a successor or assignee of the entire business interest of SEED COMPANY relating to the Licensed Variety, but in no event shall SEED COMPANY assign or transfer this Agreement to a party not a citizen or resident of the United States of America. SEED COMPANY shall notify USDA in writing prior to any transfer or assignment.

12.2 The interpretation and application of the provisions of this Agreement shall be governed by the laws of the United States as interpreted and applied by the Federal courts in the District of Columbia.

12.3 Neither party may waive or release any of its rights or interest in this Agreement except in writing. The failure of a party to assert a right hereunder or to insist on compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

12.4 The parties shall make every reasonable effort to resolve amicably any dispute concerning a question of fact arising under this Agreement. In accordance with the requirements of 37 CFR 404.11, USDA has established an administrative procedure for resolving disputes not settled amicably between the parties. Any such disputes shall be decided by the Assistant Administrator, Office of Technology Transfer, Agricultural Research Service (ARS), who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to SEED COMPANY. Any decision of the Assistant Administrator, ARS, whether it be a question of fact, or to modify or terminate this Agreement, may be appealed to the Administrator, ARS, whose decision shall be administratively final and conclusive. This shall not preclude SEED COMPANY from taking additional legal action once all administrative avenues have been exhausted. Pending final decision of a dispute hereunder, SEED COMPANY shall proceed diligently with the performance of its obligations under this Agreement.

12.5 Nothing relating to the grant of this license, nor the grant itself, shall be construed to confer upon SEED COMPANY or its sublicensees or Contract Growers any immunity from or defenses under the antitrust laws, and the acquisition and use of rights pursuant to this license shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

12.6 The provisions of this Agreement are severable, and the illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate any other provisions of this Agreement.

12.7 This Agreement constitutes the entire agreement and understanding between the parties, and neither party shall be obligated by any condition, promise or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE:

Signature Date

MOJDEH BAHAR
Assistant Administrator, Agricultural Research Service

FOR (COMPANY NAME):

Signature Date

Name: _____

Title: _____