



STANDARD BREEDERS LICENSE (Native Traits)

This Standard Breeders License (the “**Agreement**”) is effective as of [Date] (the “**Effective Date**”)

between

KWS SAAT SE & Co. KGaA, a corporation having its principal office at Grimsehlstraße 31, 37574 Einbeck, Germany

- hereinafter referred to as “**KWS**” -

and

Contract Partner, having its principal office at [address]

- hereinafter referred to as “**LICENSEE**” -

- LICENSEE and KWS hereinafter also referred to individually as a “**Party**” and collectively as “**Parties**” -

NOW THEREFORE, in consideration of the terms and conditions set forth hereunder, the Parties agree as follows:

1 – DEFINITIONS

“**Affiliate**” means in relation to a Party, any existing and/or future legal entity which directly or indirectly Controls, is Controlled by, or is under common Control with such Party. For the purpose of this definition and this Agreement, “Control” shall mean the direct or indirect ownership of more than fifty percent (50%) of the voting stock of an entity and with respect to any other legal entity, ownership of more than fifty percent (50%) of total equity interests, or otherwise the power, directly or indirectly, to direct or veto management and business policies or decisions of that entity, whether through the ownership of voting securities, by contract or otherwise. Affiliates shall not be considered third parties hereunder.

“**Breeding**” means the process of crossing and selection of plants with the aim to develop new plant varieties.

“**Commercial Activity**” means and starts with the application for PVP or national listing or variety registration of a variety or plant material which contains the Licensed Native Trait and includes without limitation any seed production, marketing, sale, delivery or other commercialization of seeds or plant material containing the Licensed Native Trait.

“**Field**” means [name of crop / all agricultural crops].

“**Licensed Native Trait**” means [name of Native Trait from KWS Website Native Trait Catalogue] and covered by a Valid Claim of the Patent Rights.

“**Patent Rights**” means any subject matter claimed in the claims or disclosed in the specification of the patent(s) and patent application(s) and all national or regional patents and patent applications derived from the aforementioned patent(s) and patent application(s) or claiming priority thereto or claiming inventions disclosed therein including all divisions, continuations, continuations-in-part (but only to the extent the claims thereof are enabled by disclosure of the parent applications), re-examined and reissued patents.



“Source Material” means any biological material that contains the Licensed Native Trait, that has been registered and approved for commercialization and is sold on the open market in part or all of the Territory, and that is owned by KWS or its Affiliates or any third party authorized by KWS, or otherwise legally available.

“Territory” means the 39 member states of the European Patent Organization existing at the Effective Date.

“Valid Claim” means any pending claim or claim in any issued and unexpired patent under the Patent Rights, which has not been abandoned, revoked, or held unenforceable, unpatentable or invalid by a court or other governmental agency of competent jurisdiction, from which no appeal has been or can be taken, and which has not been admitted being invalid or unenforceable through reissue, disclaimer or otherwise.

2 – BREEDING LICENSE

2.1 Subject to the terms and conditions set forth herein, KWS hereby grants to LICENSEE and its Affiliates, and LICENSEE accepts, a non-exclusive, non-sublicensable, non-transferable, royalty-free license under the Patent Rights to use the Source Material during the term of this Agreement within the Field and Territory for and in Breeding. Such license shall also include the right to use molecular markers and/or DNA Sequences representing molecular markers that are associated with the Licensed Native Trait and as claimed under the Patent Rights to determine absence or presence of the Licensed Trait Native in biological material of the respective crop.

2.2 For the avoidance of doubt and without limiting anything of foregoing, the license granted hereunder is strictly limited to the usage rights described in Article 2.1, and no license is granted under the Patent Rights for any other activities, including without limitation i) to use any technical process to modify plant genomes or to introduce novel traits into plants; or ii) to use any other biological or non-biological materials or tools – including but not limited to molecular markers and/or DNA sequences representing molecular markers – other than Source Material, except as set forth above in Article 2.1; or iii) to use any DNA Sequences not representing molecular markers; or iv) to use Source Material for any other purpose than as donor material for the Licensed Native Trait; or v) any Commercial Activities.

For the avoidance of doubt nothing herein shall be construed or interpreted as limiting any rights or exemptions under applicable laws, i.e. Plant Variety Protection or Patent laws.

3 – TERM AND TERMINATION

3.1 This Agreement becomes effective as of the Effective Date and shall remain in force and effect until the abandonment, expiration or invalidation of the last of the Patent Rights, unless terminated in accordance with the following provisions.

3.2 LICENSEE may terminate this Agreement by giving six (6) months prior written notice to KWS.

3.3 KWS shall be entitled to terminate this Agreement with immediate effect by giving notice in writing to LICENSEE in the event

- LICENSEE files a petition of any type as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditor, goes into liquidation or receivership or otherwise loses legal control of its business to a third party; or
- of a change of Control of LICENSEE or any disposal of substantially all assets pertaining to the business concerned by this Agreement to a third party.



- the agreement between KWS and a third party, under which KWS has been granted the right to grant the licenses hereunder, terminates; or
- the respective Licensed Native Trait becomes subject to a regulatory approval process including but not limited to any approval under any GM or novel food & feed regulations.
- in the event of material breach by LICENSEE or its Affiliate(s) and having failed to remedy such breach to the satisfaction of KWS, within sixty (60) days of receipt of written notice of the breach.

4 – CONSEQUENCES OF TERMINATION

4.1 Upon termination of this Agreement LICENSEE and its Affiliates shall upon request from KWS (i) cease to use any plant material generated under this Agreement, including without limitation any varieties, plants, plant parts, tissues, pollen, seed, DNA and other reproductive materials or component thereof, and (ii) at request of KWS destroy such plant material and any related written documents to the extent LICENSEE would not have been entitled to pursue the activities hereunder under applicable laws. LICENSEE shall certify the destruction to KWS in writing within four (4) weeks after termination or expiration of this Agreement.

5 – LIMITED WARRANTY AND LIABILITY

5.1 Each Party hereby represents and warrants that it has full power and authority to enter into this Agreement and grant the rights set forth herein.

5.2 The rights granted herein by KWS are provided “as is” and, except as set forth in Article 5.1, KWS makes no representations or warranties of any kind concerning the Patent Rights or the License Native Traits and hereby disclaims all representations and warranties, express or implied, including without limitation warranties of merchantability, fitness for a particular purpose, non-infringement of any intellectual property rights or other rights of any third party, validity, enforceability and scope of the Patent Rights, validity of any claims of the Patent Rights, whether issued or pending, and the absence of latent or other defects, whether or not discoverable.

5.3 LICENSEE represents, warrants and covenants that it shall comply, and shall ensure that its Affiliates comply, with all applicable laws, rules and regulations that may be in effect from time to time in any applicable jurisdiction in connection with the performance of its rights and obligations under this Agreement, including without limitation laws, rules and regulations that govern the use of biological material during all stages of research or product development,

5.4 LICENSEE and its Affiliates shall be solely responsible for its use of the Source Material.

5.5 With the exception of any liability arising from a breach of representations and/or warranties explicitly made or given in this Agreement, and with the exception of any liability caused by willful misconduct, and subject to Article 8, neither Party shall be liable to the other Party or that other Party’s Affiliates for special, incidental, indirect, consequential or exemplary damages. Nothing in this Agreement shall however limit or exclude any Party’s liability for death or personal injury caused by that Party’s negligence or for any other sort of liability that, by law, cannot be limited or excluded.

5.6 LICENSEE agrees to be responsible for any actions or omission of its Affiliates, as applicable, in the context of this Agreement.



6 – INDEMNIFICATION

6.1 LICENSEE shall hold harmless, defend and indemnify KWS, and its Affiliates, board members, directors, officers, employees and agents (“**Indemnitees**”) from and against any claim, liability, cost, expense, damage, deficiency, loss, or obligation, of any kind or nature (including, without limitation, reasonable attorneys’ fees and other costs and expenses of defense) incurred by or imposed upon any of the Indemnitees in connection with any claims, demands, investigations, causes of action, suits or proceedings (“**Claims**”) arising out of or related to i) the exercise of any rights granted to LICENSEE and its Affiliates under this Agreement; and/or ii) any breach of this Agreement by LICENSEE or its Affiliates.

7 – MISCELLANEOUS

7.1 Assignment. This Agreement may not be assigned by LICENSEE without the prior written consent of KWS, except that LICENSEE shall have the right to assign its rights and/or obligations granted to it pursuant to this Agreement to an Affiliate. LICENSEE shall inform KWS in writing of any such assignment within thirty (30) business days of such assignment.

7.2 Governing Law and Jurisdiction. This Agreement shall be interpreted and construed in accordance with the laws of Germany. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce. The language of the arbitration proceedings shall be English and the place of arbitration shall be Frankfurt a.M. / Germany.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by proper persons duly authorized as of the Effective Date. The Agreement may also be executed via DocuSign.



KWS SAAT SE & Co. KGaA | P.O. Box 1463 | 37555 Einbeck | Germany

KWS SAAT SE & Co. KGaA

LICENSEE

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

Address

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P.O. Box 1463
37555 Einbeck
Germany

Contact

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Chairman of the Board

Philip von dem Bussche
Registry Court Göttingen
HR B 205722

General Partner: **KWS SE**

Registry Court Göttingen
HR B 205844

Chairman of the Board

Philip von dem Bussche
Executive Board
Felix Büchting (CEO)
Peter Hofmann
Eva Kienle
Nicolás Wielandt